DEPARTMENT OF TAXATION

Board of Equalization Manual

VIRGINIA DEPARTMENT OF TAXATION
OFFICE OF CUSTOMER SERVICES
PROPERTY TAX UNIT
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MANUAL FOR
LOCAL BOARDS OF EQUALIZATION

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INTRODUCTION

Historically, the Commonwealth of Virginia has relied upon its citizen freeholders, organized as boards of assessors and boards of equalization, to establish and equalize real property tax assessments. This system worked well when real estate markets were fairly static and where properties were largely homogeneous in nature.

Recent decades have witnessed rapid changes in real estate markets in terms of both activity and complexity. Additionally, the growth of local government and a concurrent rise in local funding needs have helped to focus the public's attention on the property tax to an extent heretofore unknown. The time-honored system of assessments made by lay citizens has proved to be, for the most part, unworkable and likely to produce inaccurate and inequitable assessments.

In order to satisfy Virginia's constitutional mandate requiring fair market value, most localities have found it beneficial to employ professional appraisers/assessors either to assume legal responsibility for conducting reassessments or to act as technical assistants to local boards of assessors. The Department of Taxation has, since 1976, offered annual sessions of basic and advanced courses in Virginia for the purpose of improving appraisal knowledge and job skills.

The principle of citizen control over assessments is still observed, however, in the form of boards of assessors in many localities and boards of equalization in all localities. The General Assembly, in the 1979 session, amended Section 58.1-3374, Code of Virginia, to require that members and prospective members of local boards of equalization attend and participate in a basic course of instruction offered by the Department of Taxation in order to be eligible for appointments.

The training is mandatory for local boards of equalization; local boards of assessors are trained at the discretion of the Department of Taxation.

This booklet has been produced as an aid to satisfy the requirement of Section 58.1-3374. It is not intended to be used as a "how to" guide either for real property valuation or for the conduct of local equalization proceedings. Answers to specific questions in these areas are best obtained from the local professional staff or from the Department of Taxation. This publication is intended to provide the prospective board member with an overview of the real estate tax system in Virginia and the role of the equalization board in that system. This should enable the local board member to better execute his or her duties and result in a more equitable tax system.

Chapter 1

UNDERSTANDING REAL PROPERTY ASSESSMENT

An Executive Summary for Local Government Officials

By Research and Technical Services, International Association of Assessing Officers for Office of Policy Development and Research, Department of Housing and Urban Development. January 1979

The research and studies forming the basis for this report were conducted under a contract (H-2172R) with the U.S. Department of Housing and Urban Development (HUD), Office of Policy Development and Research. The statements and conclusions in this report are those of the contractor and do not necessarily reflect the views of the U.S. Government in general or HUD in particular. Neither the United States nor HUD makes any warranty, expressed or implied, or assumes responsibility for the accuracy or completeness of the information in this report.

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The Virginia Department of Taxation gratefully acknowledges that "UNDERSTANDING REAL PROPERTY ASSESSMENT" is reprinted with the permission of the International Association of Assessing Officers (IAAO). Although published in 1979, the information contained in this document provides a concise overview, highlighting key elements and concerns of the real property assessment process.

Please note that due to the age of "UNDERSTANDING REAL PROPERTY ASSESSMENT" some of the materials and contact information referenced may not be available or may no longer provide contact to the referenced parties.

PREFACE

This report is written for local government officials—elected or appointed—who want to improve real property assessment practices. It outlines what these officials should ask about or look for in evaluating whether assessment practices in their communities meet modern standards. It also outlines how improvements can be made in assessment practices.

There are two companion pieces to this report. *Evaluating Real Property Assessment Practices*: A Management Guide provides more detailed guidelines on making a self-evaluation of assessment practices; *Improving Real Property Assessment*: *A Reference Manual* provides detailed guidelines for assessment personnel on evaluating and improving real property assessment practices.

ACKNOWLEDGEMENTS

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In the course of the research and the writing of the project reports, literally hundreds of assessing officers and others made contributions. Special thanks, however, are due to the following people who as project advisors gave generously of their time and made numerous helpful suggestions throughout the course of the project and the writing of this report.

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CONTENTS

WHY ARE ACCURATE PROPERTY ASSESSMENTS IMPORTANT?

Property assessments are a source of many local political and fiscal problems. Taxpayers object when assessments are inequitable. Fiscal management is also adversely affected. Large, unvoted increases in property taxes caused by the failure to offset increases in assessed values with decreases in tax rates are unpopular. Major shifts in the share of property taxes borne by homeowners, farmers, business, and industry that follow infrequent reassessments also cause an outcry. Reforming real property assessment practices can help avoid or resolve such controversies.

Fiscal Health

There are several links between a local government's fiscal health and real property assessments. Assessments based on up-to-date property values can strengthen fiscal health by accomplishing the following goals:

- Maximizing potential property tax revenues. Inadequate assessment practices usually underestimate property values, thereby limiting potential property tax revenues by understating the tax base.
- Increasing borrowing capacity. Because the borrowing capacity of local governments is often limited to a certain ratio of debt to total assessed value, any general underassessment restricts the power to use bond financing. Bond rating houses also examine assessed value when assigning ratings. With the same debt load, a higher assessed value can result in a higher bond rating and lower interest rate.
- Assuring a full share of intergovernmental aid. Intergovernmental payments to local governments are often tied to property values. Increasingly, aid distribution formulas penalize local governments that understate property values.

Sound assessments can help maintain fiscal health in other ways. The property tax is a more stable revenue source than the sales and income taxes because property values reflect long-term economic considerations. Property tax rates are flexible and can be easily adjusted to meet changing revenue needs as long as rate ceilings have not been reached. Real property is immobile, and property taxes are difficult to avoid. The property tax captures for the community some of the windfall increases in property values that are generated by public expenditures for services and capital improvements. These benefits of the property tax are maximized when assessed values are based on current market values.

Legal Mandate

The law in each state requires that property tax liabilities be distributed according to property values. Market value is the usual basis. Under the market value assessment standard, assessors are required to estimate the most likely sales prices of all taxable properties in their jurisdiction. Actual assessments, in turn, are some portion of these estimates, which are called appraisals. The advantage of the market value standard is that property owners and others, using recent sales prices as evidence, can easily judge for themselves whether they are being correctly and fairly treated.

In many of the nation's jurisdictions the law has been ignored. The standard of market value has not been adhered to. Such practices have been tolerated or winked at in the past, but this is rapidly changing. Taxpayers, both individually and collectively, are challenging illegal assessments. They are taking their cases to the courts and to the press. Journalists and consumer groups are increasingly zeroing in on inequities in property tax administration. The attacks are sophisticated and state and federal courts are being persuaded that inequities must be corrected.

WHAT IS THE RELATIONSHIP BETWEEN PROPERTY ASSESSMENTS AND TAX POLICY?

Public confusion over who is responsible for setting property tax policy often hampers efforts to improve assessment practices. Property assessment involves (1) locating and describing properties; (2) appraising or estimating the value of all properties; (3) keeping records linking properties to their respective owners; and (4) designating the official value for tax purposes, taking into account legal reasons for altering appraised values. Property assessment, therefore, is an administrative function.

Responsibility for the Property Tax

Elected officials, however, are responsible for setting property tax levies and rates.

Popular misconceptions about who is responsible for the property tax arise because assessors adjust assessed values to reflect changes in market values, which increase or decrease property tax liabilities. Several states—including Florida, Hawaii, Montana, and Virginia—have enacted disclosure procedures to help dispel any confusion about who is responsible for property tax increases. These procedures restrict property tax revenues to the amount raised before a reappraisal unless a local governing body (a) gives notice of its intent to raise its levy and (b) holds a public hearing on the proposed levy increase. These hearings enable taxpayers to express their views on the services they expect to receive and to obtain satisfactory justification for the property tax burden they ultimately bear.

Reconciliation of Property Tax Policy with Public Goals

Elected officials face a difficult problem in reconciling property tax policy with various public goals. Preserving farmland and open space, for example, may be adversely affected by market value assessments. Some taxpayers, notably the poor and the elderly, may be overburdened even if the assessment function is performed perfectly. Solving such problems requires political judgments that are beyond the scope of this report. However, property tax relief for the poor and elderly can be accomplished through tax credits and abatements without destroying assessment uniformity. Farmland, open space, and historic structures can be preserved by restricting the use of such properties. In this way market value is equal to current use value.

In working to improve property assessments, it may become evident that present law obstructs sound assessment practices. Thus, it may be necessary to lobby for improved property tax legislation. New legislation reinforcing the market value assessment concept should be enacted, while existing legislation hampering market value assessment should be

repealed. The property tax relief measures discussed above can help overcome opposition to better assessments from those who fear the consequences of an accurate reflection of current market values in assessed values.

HOW GOOD OR BAD IS YOUR PROPERTY ASSESSMENT?

You may hear that assessing is not an exact science and that perfection is not attainable. Both are true. Nevertheless, standards of reasonable performance do exist, and there are reliable means of measuring and applying these standards.

Assessment Ratio Study

The most objective way to evaluate assessment performance is to make an assessment ratio study. An assessment ratio study is a comparison of the property appraisals made by the assessor and the actual sales prices of the same properties. An assessment ratio is calculated by dividing the assessed (or appraised) value by the sale price, and an assessment ratio study reveals how closely appraised values correspond to sales prices. The overall relationship between assessed values and sales prices in a jurisdiction or class of properties is represented by the average (mean) or middle (median) assessment ratio. Overall assessment ratios for a class of properties, or for the jurisdiction as a whole, should be approximately equal to the legal assessment ratio or to the legal mandated fraction assessed values are of market values. If the overall ratio is below the legal ratio, the tax base is understated. If the assessment ratios for different classes of properties or neighborhoods are unequal, assessment inequities exist.

Coefficient of Dispersion

The variation among individual assessment ratios is represented by the "coefficient of dispersion." The coefficient of dispersion is the average percentage by which individual assessment ratios deviate from the median assessment ratio. It is also a measure of assessment equity. For example, a 20 percent coefficient of dispersion means that roughly half of the properties in a class or jurisdiction fall within a range of 20 percent above or below the median assessment ratio. Coefficients of dispersion for residential properties should generally range between 5 and 15 percent. In areas of similar single-family residential properties, coefficients closer to 5 percent are attainable. In older, dissimilar areas, a coefficient at the upper end of the range might indicate good performance. A similar range in coefficients of dispersion should be attainable for multi-family and other income-producing properties. The market for vacant land, however, is much more volatile and, therefore, difficult to predict. Coefficients of dispersion in the area of 20 percent may therefore indicate good performance.

Appraised and Market Values

Close correspondence between appraised values and market values is crucially important to property tax equity. A property assessed 20 percent more than market value pays 50 percent more taxes than an equal property assessed 20 percent less than market value. For this reason, your assessor should conduct his own assessment ratio study. Alternative sources of assessment ratio studies include the state property tax supervisory agency; a county-level

assessment equalization agency if assessing is a municipal or township function; and the Census of Governments, made every five years by the U.S. Bureau of the Census. If an assessment ratio study indicates that assessments are below par, a review of the assessment system should reveal the reasons for the poor performance.

DOES YOUR ASSESSOR HAVE THE ESSENTIAL ELEMENTS OF A SOUND PROPERTY ASSESSMENT SYSTEM?

You can determine whether an assessment system is sound by asking your assessor the following questions:

- Are appraisals current?
- Is the existing appraisal program capable of maintaining up-to-date appraisals?
- Is assessing carried out openly?
- Is the assessment appeal process accessible, inexpensive, and effective?

Are appraisals current?

Assessing must be a continuous process. Properties change, owners change, and values change. Annual appraising is recommended. As long as taxes are levied annually, property assessments should be updated annually so that taxes are fairly distributed. Appraisals four or more years old are sure to be a cause of serious property tax inequities.

Is the existing appraisal program capable of maintaining up-to-date appraisals?

To get an answer to this question, you should ask the following questions:

- Does the assessor have adequate staff support? The appraisal staff should be technically proficient and large enough to get the job done. Appraisers who perform best usually have at least some college education and, in addition, have taken specialized courses in real property appraisal along with having at least several years of experience. The correct size of the appraisal staff can be determined only after a careful study of the appraisal workload, the appraisal techniques used, and the available data processing resources. Appraisal workloads are strongly affected by rapid growth and rapidly changing market values. Other things being equal, older properties present more appraisal problems than newer properties do. Similarly, properties in homogeneous land-use areas are easier to appraise than are properties in mixed use areas. In general, appraisers should not be responsible for more than 6,000 parcels.

- Does the assessor have the necessary informational resources? The assessor needs a set of up-to-date assessment maps showing the size, shape, and location of each parcel of land. The assessor also needs up-to-date records containing a description of the physical and locational characteristics of each property; records of sales detailing the price, terms, and conditions of the sale and the characteristics of the property at the time of the sale; and records of the names and addresses of property owners. To help maintain his records, the assessor should be automatically and routinely furnished with copies of all deeds and other real property transfer documents. These

property transfer documents are the primary sources of the sales data which are crucial to market-value appraisals. The assessor should also be notified automatically of all building permits. Building permits alert the assessor to changes in property characteristics. The assessor should have an independent program consisting of periodically inspecting all properties and updating cost, rental, and operating expense data.

- Does the assessor have data processing resources sufficient to support annual appraisals? An annual appraisal program requires considerable data processing support. If the assessor still relies on manual methods to make appraisal calculations, consideration should be given to using computers.

- Does the assessor employ all three basic methods of appraising properties: the sales comparison approach, the income approach, and the cost approach? The sales comparison approach consists of estimating the values of unsold properties on the basis of sales prices of sold properties. The income approach involves appraising properties on the basis of their income-generating capabilities and on expected rates of return on real property investments. The cost approach consists of adding independently determined estimates of land and building values, the building values being derived from estimates of current replacement cost less depreciation. All three approaches should be used. Outmoded appraisal programs often place too great a reliance on the cost approach, however. The cost approach is weakest when replacement costs are not recalculated annually and when current market data are not used to appraise site values and to estimate depreciation. More modern appraisal programs make effective use of the sales comparison approach by using a statistical technique known as multiple regression analysis (MRA). MRA is a particularly valuable tool in the appraisal of single-family residences. The income approach is generally the most appropriate approach to use when appraising income-producing properties such as apartments, office buildings, and stores. This is because the sales of such properties are predicated on their income-generating capabilities, and the income approach is designed to reveal relationships between income and sale price.

- Does the assessor monitor his own performance? The assessor should make his own assessment ratio studies; know approximately how many properties, by property type, there are in the jurisdiction at any time; have an annual work program designed to keep appraisals up-to-date; have production goals for each department or staff member; and know the current status of his work program. The absence of assessment ratio studies and other internal controls should be regarded as a serious deficiency which should be corrected immediately.

Is assessing carried out openly?

A climate of openness in addition to technical proficiency in assessing is necessary. This requires that public officials explain how the property tax administrative duties, and the assessing process in particular, are carried out. Property owners should be informed of changes in their assessments, they should be given access to their property records, and they should be informed of their appeal rights. Individual assessment-change notices should be

mailed to all affected property owners, together with information about assessment methods and appeal procedures. Brochures describing the property tax system, appraisal procedures, appeal rights and procedures, and property tax relief programs should be readily available. Pains should be taken to keep the language of these notices and brochures simple, understandable, and factual. Legal and technical terminology, which confuses readers and undermines citizen confidence, should be avoided. The press should be told about reappraisals and major changes in assessing procedures. The assessor should welcome opportunities to explain assessment matters to community groups.

Is the assessment appeal process accessible, inexpensive, and effective?

Property owners should have ready opportunity to inquire informally about their assessments before their tax bills are mailed, to have factual errors corrected without the expense of a formal appeal, to make formal assessment appeals to an independent body if they are dissatisfied with their assessment, and to take the matter to court if there are questions of law or if valuation questions are unresolved. The appeal process is not merely a series of public relations gestures. It should serve as a vital contribution to the accuracy and equity of assessments. Therefore, appeals need to be handled with the same care and technical proficiency as the assessments themselves. Political considerations should not be interjected into the appeal process.

HOW DO WE IMPROVE PROPERTY ASSESSMENTS?

Planning a Reappraisal:

A reappraisal is called for when assessments are out-of-date and inequitable. Conducting a reappraisal requires careful planning.

1st Step The first step in planning a reappraisal is to determine what needs to be done. Maps must be up-to-date. Data collection and appraisal procedures must be developed. Forms must be designed and printed. Computer systems may need to be developed as well. Staff must be hired and trained. Work plans and assignments must be made. Quality-control checks must be instituted. Properties must be inspected and described. Market data such as sales prices, rents, and costs must be collected. Data must be transcribed, and calculations must be made. Preliminary estimates of market values must be checked for reasonableness. Progress and performance must be monitored. The public must be kept informed.

Planning a Reappraisal:

2nd Step The second step is to determine funding requirements and appropriate the necessary funds. The cost of work done by the assessor and other government agencies, such as the data processing department, can be determined through normal budgeting procedures. The cost of work which will have to be done by outside contractors can be determined through a competitive bidding process. It is a good idea to consider the possibilities of cost-sharing and financial assistance. For example, the cost of assessment maps and developing computerized property record files could be shared by other agencies that use property data, such as planning, engineering, highway, and even human resource departments. Local governments may elect to use federal general revenue sharing funds or community

development block grants to implement improved map and record systems. Employment programs can be used to hire data collectors. Sometimes state governments have financial assistance programs for improvements of local real property assessment systems.

Planning a Reappraisal:

3rd Step The third step in planning a reappraisal program is to determine whether the necessary skill and manpower needs can be met within the assessor's office. In general, developing the internal capability to make and maintain current market value assessments is preferable to relying on outside services. Developing a new assessment system, particularly one that is heavily reliant on computers or that requires making a reappraisal of all properties, may necessitate temporary outside assistance. If the review of assessment practices suggests that outside assistance is needed, care should be taken to ensure that contractors are selected on the basis of their responsiveness to the assessor's needs and their technical and financial qualifications, and not on the basis of lowest bid alone.

Many sources of assistance are available to communities, including the state property tax supervisory agency, faculty members of nearby colleges and universities, firms specializing in making reappraisals, firms specializing in developing assessment systems, and management consultants. The International Association of Assessing Officers (IAAO) can also provide assistance. If you or your assessor want more detailed information on evaluating assessment systems, a copy of *Evaluating Real Property Assessment Practices: A Management Guide* can be obtained from IAAO. This guide will help you pinpoint problem areas or needs and will help you establish priorities for improving assessment practices. *Improving Real Property Assessment: A Reference Manual*, also available from IAAO, is written for assessors and specialists, and provides detailed coverage of the key elements of an effective real property assessment system as well as specific solutions to assessment problems. In addition to publications, IAAO offers consulting services and conducts assessment personnel education programs. The IAAO Research and Technical Services Department will gladly advise you on how to proceed in either evaluating existing assessment practices or implementing improved assessment practices.

Please feel free to write or call:
Director, Research and Technical Services
International Association of Assessing Officers
1313 East 60th Street • Chicago, Illinois 60637 • (312) 947-2051

SUGGESTED READINGS

Brandon, Robert M.; Rowe, Jonathan; and Stanton, Thomas H. *Tax Politics: How They Make You Pay and What You Can Do About It*. New York: Pantheon Books, 1976. 297 pp., but see especially pp. 143-244. (201 East 50th Street, 10022; $6.95 ph)
A lucid and succinct explanation of the theories and principles of property taxation, the assessment process, and the methods used to evaluate assessment performance. Written specifically for lay persons, particularly for those involved in taxpayer associations or interested in forming one.

Ecker-Racz, L. L. *The Politics and Economics of State-Local Finance* Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1970. 242 pp. (Order Department, 07632; $6.95 ph)
An elementary guide to the tax structure of state and local governments. Chapters 7-10 deal specifically with property taxation, and they cover such issues as full-value assessments, exemptions, farmland on the urban fringe, and site value taxation, among others.

Harriss, C. Lowell. *Property Taxation in Government Finance* Research publication no. 32. New York: Tax Foundation, Inc., 1974. 61 pp. (50 Rockefeller Plaza, New York 10020; $2.50 pb)
An intelligent lay person's guide to the principles of property taxation, its administration, and equity issues. Also briefly discusses the non-revenue effects of property taxation and specific suggestions for reform.

U.S. Advisory Commission on Intergovernmental Relations *The Property Tax in a Changing Environment: Selected State Studies.* Information Report M-83. Washington, D.C., 1974. 297 pp. (726 Jackson Place, N.W., 20575; no charge pb.)
A "state of the art" report on property taxation in thirty-three states. Evaluates the property tax systems of these states in terms of their (1) legitimacy (enforceable valuation policies where there is no discrepancy between law and actual practice); (2) openness (workable appeals systems, published statistics, and the availability of assessment ratio studies); (3) technical proficiency (consolidated districts, state supervision, assessor certification requirements); and (4) compassion (relief for low-income groups). Statistical data and model legislation are included.

Authorization for use of IAAO Publication

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FW: brochure

Angela Blazevic [Blazevic@iaao.org]
Sent: Fri 9/9/2011 9:04 AM
To: Morris, Nicholas (TAX)

Good morning Nick!
It was good to talk to you yesterday! I have spoken to Chris Bennett, Director of Publications & Marketing for IAAO and he has given his blessing for you to use the brochure; please refer to his note. If you have any questions, please feel free to contact me or you may also contact Chris at Bennett@iaao.org
I hope I get to see you next week in Phoenix at our Annual conference, if not this year perhaps next year!

Thank you Nick!

Yes it is permissible but he should use the current version posted on our Web site and attribute the content to us.
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September 18-21, 2011 Phoenix, Arizona
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Chapter

2

CONSTITUTIONAL AND STATUTORY PROVISIONS FOR REAL ESTATE TAXATION

The Constitution of Virginia, in Article X, mandates that all property shall be taxed. It is, therefore, exemption that must be legally established rather than taxation. Article X further provides that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. The General Assembly is authorized to define and classify taxable subjects.

Other provisions of Article X require that all assessments of real estate and tangible personal property shall be at fair market value with the exception of those assessments of certain real estate devoted to agricultural, horticultural, forest and open space uses, which may be granted preferential assessments within the limits or conditions imposed by the General Assembly. Finally, Article X segregates real estate and tangible personal property as subjects of local taxation only, with the provision that these properties shall be assessed in such manner and at such times as the General Assembly may prescribe by general law.

Statutes

The statutes controlling real estate assessments and general reassessments are too numerous and complex for the scope of this discussion. However, an understanding of the general framework will be helpful.

Virginia law requires periodic reassessments of real estate in every taxing jurisdiction. The maximum time that may pass before a locality conducts a general reassessment is six years for counties and four years in the case of cities. The population of the locality determines the particular year in which a reassessment must be conducted. Localities may also adopt an annual assessment plan or a biennial general reassessment plan. Finally, there may be a general reassessment of real estate in any county or city in any year if the governing body so directs by a majority vote.

Following general reassessment the levy imposed by the governing body is applied to the new values. Governing bodies are not permitted to reap revenue windfalls due to an increase in assessed values. Subsequent to a reassessment, the local governing body must reduce the levy to such a rate as would produce no more than 101 percent of the revenue generated in the previous year. If a higher rate is necessary, the governing body must advertise the increase and conduct a public hearing on the matter. This safeguard has been put into law since the responsibility for increasing local government expenditures should be properly borne by the governing body and not by the assessing officer. This limitation, of course,

applies only to total revenues; the actual tax bill of an individual property owner may increase at a greater rate.

The assessed values established during a general reassessment are "locked in" until another general reassessment is made. A board of equalization or the appropriate circuit court may alter assessed valuations. The local assessing officer may make only those changes specifically permitted by law. Examples of these permitted changes are those caused by factual or clerical errors, rezoning, subdivision of land, and construction or destruction of buildings. New land parcels or new buildings cannot be assessed at current values but must be assessed comparably with the assessments made on similar property during the most recent general reassessment. The equalization board member should realize that, barring an appeal to the circuit court, both the taxpayer and the assessing officer will have to abide by the decisions of the board of equalization (and the results of such decisions) until another general reassessment is made in the locality.

The terms for members of boards of equalization in any city or county except those which have a permanent board of equalization appointed according to law and except those operating under the county executive or county manager form of government shall expire twelve months after the effective date of the assessment for which they were appointed. The effective date of the assessment is January for a calendar year or July for a fiscal year assessment.

If any locality fails to comply with the statutory provisions for conducting periodic general reassessments, the State Comptroller is required to withhold from that locality its share of the profits from the operation of the alcoholic beverage control system.

Chapter

3

VALUATION OF REAL ESTATE

As we have seen, the *Constitution of Virginia* requires that all assessments reflect fair market value. For many years this mandate was honored more in the breach than the observance. Most localities used a prescribed fraction of the appraised value as an assessed value and the fraction used often varied from one locality to the next and from one general reassessment to the next. This patchwork system sometimes helped to disguise inequalities and occasionally made it difficult for the taxpayer to compute the true tax rate or to compare the assessment made on his property with the assessment made on similar property in the locality. For example, using a 15 percent assessment ratio would reduce a $10,000 appraisal error to a $1,500 assessment error: a figure low enough to possibly avoid protest from the taxpayer. In 1975, the General Assembly amended Section 58.1-3201 of the *Code of Virginia* to require that all assessments effective in 1977 or after would be at 100 percent of fair market value.

Virginia does not have a statutory definition of fair market value. Instead, Virginia's definition has been provided by its application in a long series of cases over a number of years. In Virginia, fair market value is defined as:

"…the price which it will bring when offered for sale by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it."

This generally means that in order to reflect fair market value a sale must occur between informed parties acting without duress.

The appraiser should also consider several other factors when weighing the merits of a particular sale.

1) Was adequate time allowed to sell the property?
2) Was the property properly exposed to the open market?
3) Was the sale an "arm's-length" transaction, i.e., one not involving love and affection or other non-monetary consideration?
4) Was the sale transacted on typical terms with regard to financing and conditions of sale?

Market value is a hypothetical concept, not an established fact. It is the estimated probable selling price of a property as of a given point in time. Market price, on the other hand, is a fact, i.e., the actual number of dollars at which a property is transferred. The two terms are not synonymous.

Again, market value is the estimated probable selling price of a property at a particular point in time. It is the point around which market prices will cluster.

The individual who makes an estimate of value is the appraiser. This requires assembling a considerable amount of information about the subject property and its location. This information includes, but is not limited to, the general economic conditions in the county or city, planning and zoning regulations, neighborhood boundaries, and sales and cost data. Among other things regarding an individual parcel, the appraiser must determine its location, topography, physical characteristics, use and size. If the property is improved with a building, he must ascertain its age, size, condition, type and quality of construction.

Sources of the above information include public records, real estate and construction professionals, property owners and physical inspections. With these facts in hand, the appraiser can begin analyzing them and apply his best judgment along with the correct appraisal methods and techniques in order to develop a reliable estimate of market value.

Three Approaches to Value

The appraisal profession recognizes three avenues to an estimate of value. These are generally known as the **cost, market,** and **income approaches.** All are based on common sense and sound economic principles.

With the cost approach, the appraiser must determine the cost to construct a reproduction or suitable replacement of the subject property and deduct from that figure the accrued depreciation observed in the subject. The economic principle here is that of substitution; i.e., a prudent purchaser would not pay more for a property than the cost of building a reproduction, replacement or suitable substitute for it.

In the market approach, the appraiser analyzes the sale prices of properties similar to the subject, adjusts those prices to reflect any differences between the properties sold and the subject and applies the adjusted price to the subject as an indicator of value. Again, the principle is that of substitution, i.e., a prudent buyer would not pay more for a property than the price of purchasing a suitable replacement.

Using the income approach, an appraiser estimates the net income (before debt service) that a property can earn for its owner. That projected income is then capitalized into an estimate of value. The economic principle governing this concept is that of anticipation, that is, value equals the present worth of the future net benefits of ownership.

In the appraisal process, one approach may be more applicable than another depending on the circumstances. For example, investors in apartment buildings are not as interested in the cost of apartment buildings or the purchase prices of similar properties as they are interested in the quantity, quality and duration of the income stream produced by such a property.

In many geographical areas, recent sales of single-family homes make the market approach the most reliable indicator of residential real estate value.

Special purpose properties, such as large manufacturing facilities, are seldom sold or leased. If sold or leased, they are often so unique as to render meaningless any comparison to other properties.

The task of an appraiser is to select, or accord more weight to, the approach that is most applicable to the subject property.

The scope of this discussion neither permits nor warrants a detailed treatment of the appraisal process. Practice of the appraisal profession with any degree of confidence requires several years of experience and study (which the appraiser should continue throughout his career). The indispensable ingredient, of course, is good judgment, which education and even experience cannot always provide. Assistance with particular valuation problems is always available from a local professional staff or from the Department of Taxation.

Chapter 4

DEPARTMENT OF TAXATION

As noted earlier, the C*onstitution* identifies and segregates real estate as a subject of local taxation only, with the stipulation that it be assessed in such manner and at such time as the General Assembly may prescribe by general law. The agency of the Commonwealth that is charged with certain responsibilities in this area is the Department of Taxation (TAX).

The Tax Commissioner, who is appointed by the Governor and confirmed by the Legislature, heads TAX.

Several of the state's functions in the local property tax area consist of powers and responsibilities vested in the Commissioner. For example, if the governing body, local board of equalization, or any ten citizens requests, TAX provides advisory aid and assistance to such board in the matter of equalizing the assessments of real estate and tangible personal property among the property owners of the locality. State law also charges the Commissioner with the establishment of a real property classification system and the collection and publication of property tax data.

Ratio Study

Each year in every Virginia locality a sample is taken of the real estate sales transactions of the previous year. The size of the sample taken varies with locality size, ranging from 100 or fewer items to thousands of items. Sales prices of the individual properties in the sample are compared to the current assessed values of those properties, and each property's ratio of assessed value to sale price is computed. These individual ratios are then separated by property class and arrayed from highest to lowest.

Property Classification Codes:

1 - Single-Family Urban
2 - Single-Family Suburban
3 - Multi-Family Residential
4 - Commercial and Industrial
5 - Agricultural or Undeveloped, 20 to 100 acres
6 - Agricultural or Undeveloped, over 100 acres
7 - Tax Exempt (not used in study)

Illustration of Ratio Sample

Class 2 - Single Family Suburban

Selling Price	Assessed Value	Ratio
68,500	73,600	107.4%
101,000	99,200	98.2%
41,200	38,600	93.6%
57,000	50,700	88.9%
34,300	29,700	86.6%
75,500	64,600	85.6%
91,500	77,800	85.0%
43,000	34,300	79.8%
61,100	48,000	78.6%
38,900	30,300	77.9%

From this basic data several important statistics can be developed. The median ratio, in a sample, is a good indicator of the overall assessment level. The median ratio of one class can be compared to the median ratios of other classes in order to learn if that class of property is being assessed equitably in relation to other classes. In the illustration above the median ratio is 86.1 percent. If the sample of Class 4 properties (commercial and industrial) in the same locality should show a median ratio of 65 percent, for example, one may infer that the single family homeowner is bearing a disproportionate share of the real estate tax burden compared to commercial and industrial property owners.

Next, the coefficient of dispersion is computed for each class. This is a statistical measure of how closely the individual ratios in the sample are clustered around the median ratio. Obviously, a tight grouping (little dispersion) would indicate a high degree of equity and uniformity in the assessment.

COD Formula

The formula for the **Coefficient of Dispersion** (COD) is calculated by (1) subtracting the median from each ratio in the sample, (2) taking the absolute value of the calculated differences, (3) summing the absolute differences, (4) dividing by the number of ratios to obtain the "average absolute deviation," (5) dividing by the median, and (6) multiplying by 100.

There is some disagreement among assessment experts as to what constitutes an acceptable coefficient of dispersion. Generally, a COD of 10 percent or less is considered to be excellent. Of course, one would expect to find a greater degree of dispersion in a large locality with a great diversity of property types than in a small locality with mainly similar properties.

The same data is also used to develop a **Regression Index** (sometimes known as a price related differential). This measure is defined as the mean ratio divided by the sales weighted average ratio. From the sample illustration above, we can compute the regression index as follows:

1) Sales weighted average ratio equals total assessed value divided by total sales prices.
2) Total assessed value = $546,800
3) Total sales price = $612,000

Thus: 546,800=.893 sales weighted average
612,000

.882 (mean ratio) = .99 Regression .893 (sales wtg.avg.) index (rounded)

A value of 1.00 indicates a uniform relationship between assessed values and selling prices. An index above 1.00 indicates that less expensive properties have a higher assessment/sales ratio than more expensive properties and, therefore, that the assessments are regressive. In other words, less expensive properties are assessed closer to market value than are more expensive properties. This inequity causes the tax to be regressive because the owner of the less expensive property would pay a greater proportion of tax in relation to value than would the owner of a more expensive property.

The regression index is an inexact measurement at best because one large sale can distort the index for a small sample. Again, there is some disagreement among assessment experts as to what constitutes an acceptable regression index. Generally, an index between .95 and 1.05 is considered reasonable.

After the above statistics are computed for the individual property classes, the coefficient of dispersion and median ratio for the entire sample is computed. This aggregate median ratio is the figure that is published as the assessment ratio of the locality.

Estimate of True Value

The median ratio is used to estimate the true value of real estate in the locality. The total taxable assessed value is divided by the median ratio.

$800,000,000 /□ .80 median ratio = $1,000,000,000 Estimate of True Value

The true value of real estate is one of three components of the Virginia Department of Education composite index of local ability to pay, and it is the component given the most weight (50 percent). The index is used in determining the distribution of funding to localities for public education.

The median assessment ratio of a locality also is used to equalize the assessments of centrally assessed public service corporation property with other property in the locality.

Virginia law provides that any locality that is found to have an assessment ratio of less than 70 percent or more than 130 percent in the first study following a general reassessment or annual assessment will forfeit the use of its share of the net profits from the operation of the alcoholic beverage control (ABC) system until such time as the between 70 and 130 percent standard is met. After the assessment ratio standard is met, the locality's accumulated ABC profits will be paid less a penalty of 8 percent per year.

Finally, the ratio study is useful in spotting problem areas in the assessment program that can be addressed in a subsequent reassessment. The assessment/sales ratio study is presently the best

means of discovery at the Commonwealth's disposal for determining the quality of local real estate tax programs. Clearly, from the foregoing discussion, a locality that chooses to ignore the constitutional mandate of equitable fair market assessments is not acting in the best interests of its citizens and is operating to the financial detriment of the community.

Continuing Education & Advisory Aid

Another important function of the Department of Taxation is the continuing education program for assessing officials in Virginia. The Property Tax Unit of the Office of Customer Relations conducts basic training sessions several times a year in various areas of the State. Advanced courses are also offered in conjunction with the International Association of Assessing Officers. Successful completion of these courses satisfies the educational requirement for the IAAO's professional designation of Certified Assessment Evaluator.

In addition, the Department's property tax staff is available to any locality, upon request, to render advisory aid and assistance with the valuation of complex or unique properties as well as to explain legal requirements and assist with administrative problems relating to real property assessments.

Chapter 5

BOARD OF EQUALIZATION

Local boards of equalization are made up of a majority of local citizen freeholders appointed by the circuit court or by the governing body. Members must be broadly representative of the community, and at least 30 percent of the board must be comprised of current or former professionals in the real estate, construction, financial or legal fields. This includes commercial or residential real estate appraisers, other real estate professionals, builders, developers, or legal or financial professionals. In addition, at least one such member shall sit in all cases involving commercial, industrial or multi-family residential property, unless waived by the taxpayer.

The board of equalization, sometimes called a board of review, has specific powers that are limited to the review of real estate taxation. Chapter 32, Article 14 of Title 58.1 of the *Code of Virginia*, delineates the powers and responsibilities of local boards of equalization. An understanding of these statutes will assist the board member in the proper performance of his or her duties.

A board of equalization must:

1) Hear or receive complaints concerning the fair market value or uniformity of real estate assessments from any taxpayer or his agent, (the taxpayer may be the owner or a lessee of the property);
2) Hear or receive all complaints concerning objections to the real estate assessment of any taxpayer from the city or county attorney or the appointed representative of the city or county;
3) Make public advertisement of its meetings;
4) Keep minutes of its meetings and notify the property owner, the commissioner of the revenue or director of finance or real estate assessor of any assessment change;
5) Correct any known duplication or omissions in the assessment roll;
6) Hear complaints concerning special assessment for agricultural, horticultural, forest and open space land use assessment (land use values are set by the commissioner of the revenue or permanent assessor, rather than by a board of assessors);
7) Conduct its meetings in public;
8) Prepare an annual written report of their actions and make such report available, upon request, to the public, the local governing body of the respective county, city or town and to the Tax Commissioner.

In order to facilitate the performance of its duties **the board of equalization may:**

1) summons before it any taxpayer or any other person to furnish information relating to the real estate of any and all taxpayers; to answer, under oath, all questions touching the ownership and value of such real estate and to furnish books of account or other documents containing such information;
2) require the commissioner of revenue or assessor of the locality to attend its meetings (without additional compensation) and to inform the board of such inequalities in assessments as may be known to him;
3) enter and inspect any real estate subject to equalization by the board; and
4) increase or decrease any assessment so that the ends of justice will be served in that the burden of taxation will rest equally upon all citizens of the locality.

In the exercise of its duties the **board of equalization cannot:**

1) void a general reassessment or annual assessment;
2) order a new reassessment;
3) make overall (blanket) increases or decreases in assessments for the locality;
4) increase any assessment without first notifying the property owner and giving him an opportunity to show cause against such increase, unless such property owner has already been heard;
5) make assessment changes that are either retroactive for past years or prospective for future years;
6) alter assessments on any real estate assessable by the State Corporation Commission or the Department of Taxation;
7) classify property, (determine if the property is to be assessed as real estate or personal property);
8) exempt property; and
9) change the method of valuing a class of property.

Obviously if all assessments could be made at 100 percent of fair market value or any other percentage, perfect equalization would be achieved and a local board of equalization would be unnecessary. However, this is not possible, so we must accept that which is reasonable and concentrates on those problems which are most pernicious and for which solutions can be found.

Virginia courts have recognized that absolute and perfect equity is not attainable, holding that before relief from assessment can be granted it must appear that the assessment is not only out of line with those of other neighborhood properties which in character and use bear some relation to that of the petitioner but that it is out of line in a general way. It is insufficient to merely show that it is valued at a different rate.

Undoubtedly the most common error made by local boards of equalization is the granting of appeasement reductions to property owners. It is easier, unfortunately, to mollify a few angry and vocal taxpayers than it is to address the more substantive problem of equity in taxation. Furthermore, this type of change is sometimes made at the expense of other changes that need to be

made but are not made because no complaint has been filed. A board of equalization is free to act whether or not a specific complaint has been made. In fact, the board has the duty to correct known erroneous assessments even though no complaint has been made.

In addition, local boards of equalization have the authority to review land use value assessments. Estimating the income producing capabilities of the several soil classes suitable for agricultural, horticultural or forest uses is the method generally used to develop land use assessments. Net incomes from such uses are capitalized into estimates of value for each soil class. These values are published annually by the State Land Evaluation Advisory Council (SLEAC) for all of the localities that have special land use assessment programs.

Extreme care should be exercised in the review of land use assessments. Within the locality, the application of these values is objective in nature and does not require the exercise of significant judgment on the part of the local assessing officer. For example, one acre of class 3 soil in agricultural use receives the same land use assessment as every other acre of class 3 agricultural soil in the local land use program. Alteration of a land use assessment for any reason other than the correction of a most obvious error may, result in a greater inequity of assessment than had existed prior to the change.

In all cases brought before the board of equalization, the valuation determined by the assessor is presumed to be correct. The taxpayer bears the burden of proving that the property is valued at more than its fair market value, that the assessment is not uniform in its application, or that the assessment is otherwise not equalized. In order for the Board to award relief, the taxpayer must produce substantial evidence that the valuation determined by the assessor is erroneous and was not arrived at in accordance with generally accepted appraisal practice. Mistakes of fact, including computations that affect the assessment are deemed not to be in accordance with generally accepted appraisal practice. It is not necessary for the taxpayer to show that the assessment is a result of manifest error or disregards controlling evidence.

Chapter

6

HIGHLIGHTS OF ASSESSMENT CASE LAW

Please note that some rulings given in this manual may no longer be relevant due to changes in statute.

"Fair market value" defined.-The fair market value of property is the price which it will bring when it is offered for sale by one who desires, but is not obliged, to sell it, and bought by one who is under no necessity of having it. *Tuckahoe Woman's Club v. City of Richmond,* 199 Va.734, 101 S.E.2d 571 (1958); *American Viscose Corp. v. City of Roanoke,* 205 Va. 192, 135 S.E.2d 795 (1964).

Rule as to fair market value is the only legal rule provided by law for assessment of realty and tangible personalty.--The rule laid down in this section that all assessments of real estate and tangible personal property shall be at their fair market value is the only legal rule provided by the law for the assessment of real estate and tangible personal property situated in this Commonwealth. *Lehigh Portland Cement Co. v. Commonwealth,* 146 Va. 146, 135 S.E. 669 (1926); *Tuckahoe Woman's Club v. City of Richmond,* 199 Va.734, 101 S.E.2d 571 (1958).

Fair market value is not the value of the property to the owner.-- In estimating the fair market value, all the capabilities of the property and all the uses to which it may be applied or for which it is adapted, are to be considered, but it is not a question of the value of the property to the owner. *Tuckahoe Woman's Club v. City of Richmond,* 199 Va.734, 101 S.E.2d 571 (1958).

Fair market value is the present actual value of the land with all its adaptations to general and special uses, and not its prospective, speculative or possible value, based on future expenditures and improvements. *Fruit Growers Express Co. v. City of Alexandria,* 216 Va. 602, 221 S.E.2d 157 (1976).

Uniform assessment on the basis of fair market value, not on the basis of use, was the criterion established by the Constitution of 1902. *City of Waynesboro v. Keiser,* 213 Va.229, 191 S.E.2d 196 (1972).

The fundamental rule in assessing all tangible properties for tax purposes is that such properties should be assessed at their highest and best use. *Norfolk & W.Ry. v. Commonwealth,* 211 Va. 692, 179 S.E 2d 623 (1971).

Assessment of property is not an exact science. *Southern Ry. v. Commonwealth,* 211 Va. 210, 176 S.E.2d 578 (1970); *Norfolk & W.Ry. v. Commonwealth,* 211 Va. 692, 179 S.E.2d (1971).

There are many factors to be considered in arriving at the fair market value of property. While size and cost of the property may be factors to be given weight, there are many other factors, which tend

to increase or diminish such value; for instance, the design, style, location, appearance, availability of use, and the economic situation prevailing in its area, as well as other circumstances. *Smith v. City of Covington,* 205 Va. 104, 135 S.E.2d 220 (1964).

And no general rule can be prescribed. The value of land, buildings and tangible personal property is dependent upon many factors, which cannot be prescribed by any general rule. *Southern Ry. v. Commonwealth,* 211 Va. 692, 179 S.E.2d 623 (1971).

Evidence of the purchase price of the assessed property, while not conclusive, is to be accorded substantial weight on the issue of fair market value. *American Viscose Corp. v. City of Roanoke,* 205 Va. 192, 135 S.E.2d 795 (1964).

Depreciated reproduction cost as representing the value of the property to the present owner is not the basis for assessment fixed by the Constitution. Depreciated reproduction cost may be an element for consideration in ascertaining fair market value, but it cannot of itself be the standard for assessment. The value of the property to the owner is not the question and the answer to it does not supply the answer to the essential inquiry as to what is the fair market value. *Tuchahoe Woman's Club v. City of Richmond,* 199 Va. 734, 101 S.E.2d 571 (1958).

It was patently unfair to use depreciated reproduction cost as a standard for assessment where the property, a dam, had no commercial use value, was unsuited for generating electricity, and had been for sale for years without offer of purchase at any price. *First & Merchants Nat'l Bank v. County of Amherst,* 204 Va. 584, 132 S.E.2d 721 (1963).

An assessment based on reproduction cost less depreciation was excessive and should have been reduced when the assessor as well as other witnesses agreed that the property would not sell for this amount in the open market when comparable sales were considered. *Norfolk & W. Ry. v. Commonwealth,* 211 Va. 692, 179 S.E.2d 623 (1971).

Long-term contracts limiting use of real estate need not be taken into account.--In determining the fair market value of certain realty of a railroad company, the State Corporation Commission was not required to take into account long-term contracts which limited the use of the property. *Richmond, F. & P.R.R. v. Commonwealth,* 203 Va.294, 124 S.E.2d 206 (1962).

But limitations by grantors on taxpayers' interest must be considered. --An assessment was erroneous which failed to take into account the limited interest held by the taxpayers under the terms of the conveyance to them, the grantors having severely restricted the effective use of the property and having imposed obligations on it and reserved as easement. *First & Merchants Nat'l Bank v. County of Amherst,* 204 Va. 584, 132 S.E.2d (1963).

In the ascertainment of fair market value and the imposition of assessments upon those values, the taxing authority must implement and administer the annual assessment and equalization system in a manner which avoids all disuniformity reasonably avoidable. *Perkins v. County of Albemarle,* 214 Va. 416, 200 S.E.2d 566 (1973).

The dominant purpose of Art. X Sect. 1 and 2, is to distribute the burden of taxation, so far as is practical, evenly and equitable. *R. Cross Inc. v. City of Newport News,* 217 Va. 202, 228 S.E.2d 113 (1976).

This section requires an assessment of property to be uniform on the same class of subjects within the territorial limits of the authority levying the tax. *Southern Ry. v. Commonwealth,* 211 Va. 210, 176 S.E.2d 578 (1970).

Uniformity must be coextensive with territory to which tax applies.--Uniform taxation requires uniformity, not only in the rate of taxation and in the mode of assessment upon the taxable valuation, but the uniformity must be coextensive with the territory to which it applies. *Moss v. Tazewell,* 112 Va.878, 72 S.E.2d 945 (1911).

The legislature has no power to exempt the taxable persons and property in a town situated within the limits of a county and forming a part thereof, from county levies, as this section expressly provides that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and this uniformity extends not only the rate and mode of assessment, but also to the territory to be assessed. *Campbell v. Bryant,* 104 Va. 509, 52 S.E.2d 638 (1905).

Where the situs of property for taxation is still in a given district, the taxes thereon must be uniform with the taxes imposed upon all similar property, the situs of which is in that district. *Rixey's Ex'rs v. Commonwealth,* 125 Va.337, 99 S.E.2d 573, 101 S.E. 404 (1919).

Uniform method of valuation impossible.--This section does not prescribe that the valuation of all property for taxation shall be ascertained in the same way or manner. It is not even implied. In the nature of things, it could not be done. The many kinds or species of property with their diverse characteristics render it impossible. *R. Cross, Inc, v. City of Newport News,* 217 Va. 202, 228 S.E.2d 113 (1976).

If it is impractical or impossible to enforce both the standard of true value and standard of uniformity and equality, the latter provision is to be preferred as the just and ultimate end to be attained. But that does not mean that property in any taxing jurisdiction may be assessed in excess of and without relation to its fair market value as required by the Constitution. It means only that a taxpayer whose property is assessed at its true market value has a right to have the assessment reduced to the percentage of that value at which others are taxed so as to meet the uniformity required by this section as well as by the equal protection clause of the Fourteenth Amendment. *Smith v. City of Covington,* 205 Va. 104, 135 S.E.2d 220 (1964).

Where it is impossible to secure both the standard of true market value and the uniformity and equality required by the Constitution, the latter requirement is to be preferred. But that does not mean that property in any taxing jurisdiction may be assessed in excess of and without relation to its fair market value as required by the Constitution. *Fray v. County of Culpeper,* 212 Va. 148, 183 S.E.2d 175 (1971).

But courts insist upon uniformity in mode of assessment and rate of taxation.--The courts, while recognizing the general custom of undervaluing property and the difficulty of enforcing the standard

of true value, have sought to enforce equality in the mode of assessment and in the rate of taxation. *Southern Ry. v. Commonwealth,* 211 Va. 692, 179 S.E.2d 623 (1971).

Before relief can be given it must appear that the assessment is out of line generally with other neighborhood properties, which in character and use bear some relation to that of a petitioner. It is not enough to show that it is valued above a rate apportioned to another nearby lot. The inequality must be not only out of line but out of line generally. *Southern Ry v. Commonwealth,* 211 Va. 210, 176 S.E.2d 578 (1970).

There are three acceptable methods used for appraising real estate -market data, capitalization of income, and reproduction cost less depreciation-since the property was income producing, income should be the primary consideration. *County of Arlington v. Ginsburg,* 228 Va. 633, 325 S.E.2d 352 (1985).

As a general rule, economic rent is the measure to be used; however, contract rent is relevant as evidence of economic rent. *County of Fairfax v. Nassif,* 223 Va. 400, 290 S.E.2d 822 (1982).

Economic rent is the amount that a typical lessee should be willing to pay for the right to use and occupy the premises for a stated period. That definition focuses upon the property that is being valued and plainly indicates that the determination of economic rent must be specific to the property under review as opposed to some abstract or theoretical property. *Smith v. County of Fairfax,* 234 Va 250, 361 S.E.2d. 351 (1987).

Economic rent is that rent which a market is currently paying for space. Market rent is the general market of office space throughout the county. Whether the county's approach is a true averaging or whether it results in theoretical, market-wide values it is at odds with the definition of economic rent, because it leads to values unrelated to the specific property being appraised. *Nassif II v. County of Fairfax,* 231 Va. 472, 345 S.E.2d 520 (1986).

Nassif I, would be an exercise in futility if all it did was to require an assessor to "think" about contract rent, then reject it as meaningless in arriving at economic rent. Contract rent is relevant evidence of economic rent and cannot be disregarded by the appraiser. In determining economic rent, contract rent must be factored into the formula; it cannot be disregarded. *Nassif II v. County of Fairfax,* 231 Va. 472, 345 S.E.2d 520 (1986).

Rents vary widely with location, physical condition, and other individual characteristics governing the relative desirability of competing rental properties. *Smith v. County of Fairfax,* 234 Va. 250, 361 S.E.2d. 351 (1987).

The county's economic model was based on rents and expenses derived from commercial properties throughout the county. The assessor had available the actual income and expenses of the property under consideration, but because the properties geographical locations and other individual characteristics are not considered *County of Fairfax v. Donatelli & Kline,* 228 Va. 620, 325 S.E.2d 342 (1985), chose to base his appraisal exclusively on the county-wide economic rent model. In the name of uniformity, the county's model can produce assessment values that are greater than actual fair

market value. The preference of uniformity of assessments must stop short of assessments greater than fair market value. *Smith v. County of Fairfax,* 234 Va. 250, 361 S.E.2d 351 (1987).

Where an assessment is based on the capitalization of income, contract rent and actual expenses must be considered in arriving at economic income. *Smith v. County of Fairfax*, 234 Va. 250, 361 S.E.2d 351 (1987).

The more reliable method in determining expense ratios is to prorate expenses for each building over the square footage of rentable space in the building. *Smith v. County of Fairfax,* 234 Va. 250, 361 S.E.2d 351 (1987).

A taxpayer who is able to show that actual rents and expenses were ignored, or given only token consideration in the formulation of an assessment, will carry his burden of overcoming the presumption of correctness to which the assessment is entitled. At that point, the burden shifts to the assessing authority to go forward with evidence tending to prove that the actual rent and expenses do not fairly reflect economic net income for the particular property being appraised. If the assessor fails to carry that burden, the assessment should be corrected. *Smith v. County of Fairfax,* 234 Va. 250, 361 S.E.2d 351 (1987).

Chapter 7

ATTORNEY GENERAL'S OPINIONS

Please note that some opinions given in this manual may no longer be relevant due to changes in statute.

February 26, 1975

THE HONORABLE EDWARD A. NATT
Commonwealth Attorney for Roanoke County

This is in response to your recent request for my opinion whether a county board of equalization has the power to equalize inequalities in the overall reassessment of county property, or whether the board is limited to the equalization of assessments of specific parcels. You state that the assessment of a group of properties in Roanoke County may be uniform among themselves, but that the assessment of the entire group may be out of line with the values accorded other groups of properties in the county by the same assessment. You also ask whether such an overall equalization, if permissible, would require an application by each aggrieved property owner.

A local board of equalization is one of the agencies charged by law with the responsibility of executing the mandate of Article X, Section 1, of the Constitution of Virginia, that local real estate taxes "shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." This requirement of uniformity is the predominant constitutional consideration relating to local real estate taxation. *See Fray v. County of Culpeper,* 212 Va. 143, 163 S.E.2d 175 (1971). The "territorial limits" within which it applies are the actual boundaries of the political subdivision levying the tax. *See Robinson v. City of Norfolk,* 108 Va. 14, 60 S.E. 762 (1908).

Inequalities may exist, and the requirement of uniformity may be violated when a group of properties is assessed differently from other groups within the county, as well as when individual parcels are assessed differently. *See Perkins v. County of Albemarle,* 214 Va. 240, 200 S.E.2d 566 (1973).

Section 58.1-3378 empowers local boards of equalization to sit at enumerated times and places "for the purpose of hearing complaints of inequalities including errors in acreage in...real estate assessments." Section 58.1-3379 provides:

The board shall hear and give consideration to such complaints and equalize such assessments and shall, moreover, be charged with the especial duty of increasing as well as decreasing assessments, whether specific complaint be laid or not, if in its judgment the same be necessary to equalize and accomplish the end that the burden of taxation shall rest upon all citizens of such county or city. The Commissioner of the Revenue of such county or city shall, when requested, attend the meetings of the board, without additional compensation, and shall call the attention of the

board to such inequalities in real estate assessments in his county or city as may be known to him. Every board of equalization may go upon and inspect any real estate subject to equalization by it.

Based on the foregoing, a board of equalization has the power and the obligation to correct erroneous groups of assessment to achieve equality and uniformity of taxation. Under § 58.1-3379, such an equalization does not require an application by each aggrieved property owner. If any assessment is increased, however, the property owner must be given notice and an opportunity to be heard pursuant to § 58.1-3381.

May 27, 1982

THE HONORABLE DIANE BRUCE
Clerk of the Circuit Court for Rappahannock County

This is in reply to your letter in which you inquired whether Form 907 issued by the Department of Taxation meets the notice requirements of § 58-906 (58.1-3381)(58.1-3370-3389) of the Code of Virginia (1950), as amended.

Sections 58-895 (58.1-3370) through 58-915 (58.1-3389) set forth the powers and duties of local boards of equalization. Section 58-906[1] (58.1-3381) empowers a board of equalization to issue an order increasing real property assessments after first providing notice of the proposed adjustment to the owner and an opportunity for him to be heard. Such notice and opportunity to be heard are required before the board may issue a final order adjusting a real property assessment. Form 907 is a form of final order only and does not provide the necessary notice nor does it advise the taxpayer of his right to be heard. In light of the foregoing, I am of the opinion that Form 907 should be used only when notice has previously been given to the property owner as contemplated by § 58-906 (58.1-3381).

You also asked if is advisable to notify the owner of the proposed changes and of his right to be heard before the board within a stated time period before the proposed order is entered and becomes final. As indicated above, such notice is required by law.

[1]Section 58-906 (58.1-3381) states: "The board shall hear and determine any and all such petitions and, by order, may increase, decrease or affirm the assessment of which complaint is made; and, by order, it may increase, decrease any assessment, upon its own motion. No assessment shall be increased until after the owner of the property has been notified and given an opportunity to show cause against such increase, unless such owner has already been heard."

October 3,1985

THE HONORABLE C. RICHARD CRANWELL
Member, House of Delegates

You have asked me to provide you with an informal opinion interpreting the authority of a board of equalization to make adjustments of assessments under §§ 58.1-3379 and 58.1-3381 of the Code of Virginia. In particular, who wish to know whether the orders of the board of equalization must be limited to single parcels of property or whether a large group or class of parcels may be made subject to a single order contemplating a uniform reduction of the assessments for each and every parcel in the group or class. In the facts of the case you presented, I understand that the board of equalization wishes to make a decrease in the assessment of certain parcels enrolled in the land use assessment program.

It is my opinion that the board of equalization need not enter a separate order for each separate parcel of property. A single, comprehensive order may be entered covering a large group or class of parcels for which the board of equalization wishes to make a decrease in the assessment. Such a single order covering more than one parcel must include sufficient information from which the commissioner of the revenue can ascertain each and every specific place of property covered and the precise adjustment which is to be made to each and every such parcel, in order that he can make the proper changes to his land book in accordance with 58.1-3385 of the Code.

Proper identification of each parcel subject to the order can be accomplished by a listing within the order of all parcels to be affected by it. In the alternative, the order of the board of equalization may incorporate by reference some other public document which lists all such properties. Incorporation by reference of a public document which lists a greater number of properties than the number the order is intended to affect will only be legally effective and, hence, the order will only be valid if the incorporation by reference is accompanied by additional identifying features by which those parcels affected by the order can be ascertained with certainty and separated from the remaining parcels in the list.

One additional word of caution needs to be given concerning this procedure. The Virginia Supreme Court case of *City of Lynchburg v. Taylor,* 156 Va. 53, 157 S.E. 718 (1931), rejected the attempt of a board of equalization to order a general reduction in all items of the assessment suggesting that such an action "is, in effect, the making of a new general assessment by the local board of equalization, which is beyond the scope of its jurisdiction." *Lynchburg* at 62. The Court also stated that the authority of the board of equalization is limited to "the power to correct *individual items* of the assessment which are erroneous..."*Id.* at 61."(I)ts function is to equalize the general assessment made by the land assessor, not to make a new general assessment." *Id.* at 62.

Given these limitations upon the authority of the board of equalization, it is my opinion that any single order affecting a group or class of parcels can only issue upon the premise that the board of equalization made a case-by-case determination for each of the parcels affected that those parcels, as a group or class of parcels, were assessed at a figure which resulted in an inequality of assessment which violates the principle "that the burden of taxation shall rest equally upon all citizens of such county or city," Section 58.1-3379 of the Code of Virginia. Any "across the board" adjustments to a group or class of individual items in the assessment which is attempted without the board of

equalization first having reached their decision on a case-by-case basis would, in my opinion, violate the precepts of the *Lynchburg* case.

August 30, 1986

THE HONORABLE J. RONNIE MINTER
Commissioner of the Revenue for the City of Martinsville

You ask whether a board of equalization appointed under § 58.1-3370 of the Code of Virginia may set (1) the date by which property owners or lessees must apply to the board for relief on real estate assessments, and (2) the deadline by which such applications must be disposed of by the board, where a locality elects not to adopt an ordinance pursuant to § 58.1-3378 setting such a date and deadline.

I. Relevant Statues

Article 14, Ch. 32, Title 58.1-3370 *et seq.*, provides for the appointment of boards of equalization for real estate assessments and sets forth their powers and duties.

Section 58.1-3370(B) provides:

The term of any board of equalization appointed under the authority of this section shall expire ~~six months~~ one year after the effective date of the assessment for which they were appointed.

Section 58.1-3378 reads, in pertinent part:

> Each board of equalization shall sit at and for such time or times as may be necessary to discharge the duties imposed and to exercise the powers conferred by this chapter. Of each setting public notice shall be given at least ten days beforehand by publication in a newspaper having general circulation in the county or city and, in a county, also by posting the notice at the courthouse and at each voting precinct. Such posting shall be done by the sheriff or his deputy. Such notice shall inform the public that the board shall sit at the place or places and on the days named therein for the purpose of hearing ~~all~~ complaints of inequalities wherein the property owners allege a lack of uniformity in assessment including errors in acreage in such real estate assessments.

The governing body of any county or city may provide by ordinance the date by which applications must be made by property owners or lessees for relief. ...Such governing body may also provide by ordinance the deadline by which all applications must be finally disposed of by the board of equalization. All such deadlines shall be clearly stated on the notice of assessments.

II. Board of Equalization May Not Set Deadlines for Receipt or Disposition of Application for Relief

The clear language of § 58.1-3378 authorizes <u>only</u> the local governing body of a city or county to set deadlines for application for relief form real estate assessments by property owners or

lessees and final disposition thereof. I find no other section which permits a board of equalization to set such deadlines.[1]

[1]See, e.g., § 58.1-3379 (dealing with a board's power to hear complaints and equalize assessments, as well as to increase and decrease assessments); 58.1-3381 (permitting the board by order to increase, decrease or affirm an assessment upon complaint made, or upon its own motion); and 58.1-3386(authorizing the board to summon taxpayers to obtain information relating to the real estate of any and all taxpayers).

In the absence of such deadlines, taxpayers may bring their complaints to the board of [1]equalization at any time the board is sitting in accordance with § 58.1-3378. Section 58.1-3378 requires that the board "shall sit...for such time or times as may be necessary to discharge the duties imposed and to exercise the powers conferred by this chapter." Thus, the practice is for the board to sit for as many days as necessary following the ten-day public notice to taxpayers required by § 58.1-3378. See 1954-1955 Report of the Attorney General at 228.

III. Conclusion: In Absence of Deadlines Ordained by Governing Body, Applications for Relief May Be Received at Any Time, but Board of Equalization's Work Must Be Completed Within Its Term.

Accordingly, it is my opinion that a board of equalization appointed under § 58.1-3370 may not set the date by which taxpayers must apply to it for relief from real estate assessments or a deadline for final disposition of such applications. Section 58.1-3370 "shall expire one year after the effective date of the assessment for which they were appointed." All applications for relief, therefore, must be received and disposed of prior to the expiration of this one year period.

June 9, 1988

THE HONORABLE L. WAYNE CARTER
Commissioner of the Revenue for the City of Salem

You ask whether a board of equalization has the authority in the second year of a biennial assessment cycle to equalize the real property assessment which were made effective January 1 of the first year of that cycle. If so, you also ask for what year or years the equalized assessment is effective.

I. Facts

Your jurisdiction assesses biennially and has a permanent board of equalization. There is no local ordinance providing the date by which application for relief must be made by taxpayers. The Notice of Real Estate Assessment Change sent by the local tax assessment office to taxpayers, however, states that all appeals to the board of equalization must be made within 30 days of the date on the Notice sent to the taxpayer.

II. Applicable Statutes

Section 58.1-3378 of the Code of Virginia provides:

> Each board of equalization shall sit at and for such time or times as may be necessary to discharge the duties imposed and to exercise the powers conferred by this chapter. Of each sitting public notice shall be given at least ten days beforehand by publication in a newspaper having general circulation in the county or city and, in a county, also by posting the notice at the courthouse and at each voting precinct. Such posting shall be done by the sheriff or his deputy. Such notice shall inform the public that the board shall sit at the place or places and on the days named therein for the purpose of hearing complaints of inequalities wherein the property owners allege a lack of uniformity in assessment, or errors in acreage in such real estate assessments.
>
> *The governing body of any county or city may provide by ordinance the date by which applications must be made by property owners or lessees for relief... Such governing body may also provide by ordinance the deadline by which all applications must be finally disposed of by the board of equalization.* All such deadlines shall be clearly stated on the notice of assessment. (Emphasis added.)

Salem, Va. Code § 2.6(d)(1981) provides, in part, that "(s)uch board of equalization shall have and may exercise the power to revise, correct and amend any assessment of real estate *made* by the assessor in the calendar year in which they serve".(Emphasis added.)

III. Only Local Governing Body Has Authority to set Deadline for Appeal of Assessment

Section 58.1-3378 authorizes *only* the local governing body to set deadlines for application for relief from real estate assessments. There is no statute or other authority which permits the tax assessor to set such deadlines, as was done in the facts you present. See 1986-1987 Att'y Gen. Ann. Rep. 298. It is my opinion, therefore, that the 30-day deadline for taxpayers to appeal their assessment to the board

of equalization, though clearly stated on the Notice of Real Estate Assessment Change, has no validity and is not binding upon the board because it was not authorized by an ordinance of the governing body.

IV. Board's Authority to Revise Assessment Limited to Year Assessment Made

Pursuant to Salem, Va. Code 2.6(d), the authority of the board of equalization to revise real estate assessments is limited to the year in which the assessment in "made". In a biennial assessment jurisdiction, the general valuation assessment or reassessment is made effective January 1 of the biennial assessment cycle. See § 58.1-3253[1]. No new valuation assessment is made in the second year of the biennial cycle unless a change occurs for which a statute permits an assessment outside of the general assessment cycle[2]. In the absence of such change, the board, pursuant to U 2.6(d), may make revisions to assessments only in the first calendar year of the biennial assessment or reassessment cycle.

V. Board Has No Authority, In Facts Presented, to Equalize Assessments in Second Year of Biennial Cycle

Based on the above, it is my opinion that, in the facts presented, the board of equalization has no authority in the second year of a biennial assessment to hear complaints of assessments which were made in the first year of that assessment cycle. All applications for relief must be received and disposed of during the calendar year in which the assessment was made. Since I conclude that such equalized assessments may not be made, a response to your second question is unnecessary.

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[1]This statute permits local governing bodies to provide by ordinance for biennial assessments and provides that a reassessment is to be conducted biennially but may be completed over the course of the entire two-year period.

[2]See, e.g., 58.1-3285 (reassessment of lots subdivided or rezoned); § 58.1-3292 (assessment of new buildings); § 58.1-3293 (assessment when building damaged or destroyed or for removal of timber from timberland.)

10/02/1998

THE HONORABLE CALVIN C. MASSIE
Commissioner of the Revenue for Campbell County

Your questions relate primarily to instances in which a commissioner of the revenue discovers that an assessment of the fair market value of real estate was based on a factual error. You provide the following examples of factual errors:

(1) the assessor used the wrong number of square feet in developing the assessment;

(2) land believed to perk will, in fact, not perk according to certification by the Department of Health;

(3) a mobile home hookup believed to exist on a lot does not exist;

(4) the actual number of apartment units per building is less than what the assessor used in developing the assessment;

(5) the assessor believes that a basement is completely finished when it actually is completely unfinished; and

(6) an abandoned building believed to have running water and sewage actually has no running water or sewage.

You ask whether the commissioner may correct the assessment in such instances and, if so, whether correction would be appropriate under § 58.1-3981 or under § 58.1-3984.The term "assessment" is used in the tax statutes to mean both the determination of the fair market value of property by the appraiser and the levying of taxes by the commissioner of the revenue on the basis of that valuation.3 The commissioner of the revenue determines the fair market value of personal property.4 Subject to certain statutory exceptions, the assessment of the fair market value of real estate ordinarily is performed by the local board of assessors or a local real estate appraiser5 rather than by the commissioner of the revenue.6

Section 58.1-3980 authorizes persons assessed by a commissioner of the revenue with local taxes on tangible personal property, machinery and tools, and merchants' capital, or a local license tax, to apply to the commissioner for correction of the tax. § 58.1-3981 authorizes the commissioner to correct an erroneous assessment made by the commissioner of the revenue and to exonerate unpaid amounts. Other than erroneous assessments resulting from "a mere clerical error or calculation,"7 §§58.1-3980 and 58.1-3981 do not authorize a commissioner to correct an erroneous assessment of real estate taxes unless "the error sought to be corrected in any case was made by the commissioner of the revenue."8 Accordingly, in most instances a commissioner of the revenue may not correct an erroneous assessment of the fair market value of real property through the procedure provided in §§58.1-3980 and 58.1-3981.9

Section 58.1-3984 applies generally to applications to the court for the correction of erroneous local tax assessments, with subsection A authorizing taxpayers to apply for correction and subsection B authorizing commissioners of the revenue to apply for correction. The Supreme Court of Virginia has held that the remedy provided landowners in § 58.1-3984 encompasses an assessment in whichever of its two meanings the word is used, whether as an assessment of the value of the real estate or as an assessment of annual taxes based on the valuation.10

In addition, § 58.1-3989 expressly provides:

Sections 58.1-3984 through 58.1-3988, insofar as they apply to real estate, shall be construed to include assessments made at a general reassessment, and the remedy therein provided shall be available to any person assessed at such general reassessment although no taxes may have been extended on the basis of such assessment at the time the application is filed.

Prior opinions of the Attorney General recognize that, just as § 58.1-3984(A) enables a taxpayer to challenge the appraisal of the fair market value of real estate, § 58.1-3984(B) enables a commissioner who discovers that an appraisal of the fair market value of real estate is improper or based on obvious error to apply to the court for relief on behalf of the taxpayer.11 The examples you provide appear to involve mistakes of fact that, if relied on by the official or officials responsible for real estate appraisals, could result in an erroneous assessment of the fair market value of the property.12 Thus, § 58.1-3984(B) would authorize a commissioner of the revenue to institute proceedings for a court to correct any such assessment.13

You ask also whether a commissioner is obligated to petition a court for correction or whether pursuit of the matter is left to his discretion once he becomes aware of the error or improper assessment. § 58.1-3984(B) provides that, once a commissioner becomes aware that an assessment is erroneous or based on obvious error and that it should be corrected to serve "the ends of justice," the commissioner "shall" apply to the court for relief of the taxpayer. The word "shall" is primarily mandatory in its effect.14 It is my opinion that, unless the commissioner is uncertain as to whether an assessment is erroneous or unless other facts indicate that the "ends of justice" would not be served by filing the application, § 58.1-3984(B) imposes a mandatory duty on a commissioner to file an application for relief of the affected taxpayer or taxpayers.15

Your next question is regarding the time frame in which an application for correction of an assessment must be filed under § 58.1-3984(B). § 58.1-3984(A) provides that an application by a taxpayer must be made within the later of (i) three years from the last day of the tax year for which the assessment is made, (ii) one year from the date of the assessment, (iii) one year from the date of a final decision in the appeal of a local license tax assessment under § 58.1-3703.1(A)(5), or (iv) one year from a final decision under § 58.1-3981 .

Section 58.1-3984(B) provides that an application by a commissioner is to be made "in the manner herein provided for relief of the taxpayer." Accordingly, an application by a commissioner under § 58.1-3984(B) must be brought within the time frame provided for an application by a taxpayer under subsection A.

Your final question seeks clarification of the term "clerical error" as used in § 58.1-3981. § 58.1-3981 permits a commissioner of the revenue to correct an assessment that is erroneous "because of a mere clerical error or calculation" without a petition from the taxpayer. Such authority extends to clerical errors or calculations made in work performed by others in connection with conducting general assessments. While the exclusion for "clerical error" must be applied on a case-by-case basis, it is my opinion that the term contemplates errors in the recordkeeping or other clerical functions of the assessment process as opposed to errors relating to the actual assessment of the value of the property or the assessment of the tax on the property.16 It is my further opinion that the examples you provide of mistakes of fact that could result in erroneous assessments of the

fair market value of the property are not encompassed within the exclusion for "mere clerical error," and § 58.1-3981 does not authorize a commissioner to summarily reduce such assessments.

1. Section 58.1-3981 provides:
"If the commissioner of the revenue, or other official performing the duties imposed on commissioners of the revenue under [Title 58.1], is satisfied that he has erroneously assessed such applicant with any such tax, he shall correct such assessment. If the assessment exceeds the proper amount, he shall exonerate the applicant from the payment of so much as is erroneously charged if not paid into the treasury of the county or city. If the assessment has been paid, the governing body of the county or city shall, upon the certificate of the commissioner with consent of the town, city or county attorney, or if none, the attorney for the Commonwealth, that such assessment was erroneous, direct the treasurer of the county, city or town to refund the excess to the taxpayer, with interest if authorized pursuant to § 58.1-3991. However, the governing body of the county, city or town may authorize the treasurer to approve and issue any refund up to $2,500 as a result of an erroneous assessment.
"If the assessment is less than the proper amount, the commissioner shall assess such applicant with the proper amount. If any assessment is erroneous because of a mere clerical error or calculation, the same may be corrected as herein provided and with or without petition from the taxpayer. If such error or calculation was made in work performed by others in connection with conducting general assessments, such mistake may be corrected by the commissioner of the revenue. An error in the valuation of property subject to the rollback tax imposed under § 58.1-3237 for those years to which such tax is applicable may be corrected within three years of the assessment of the rollback tax.
"A copy of any correction made under this section shall be certified by the commissioner or such other official to the treasurer of his county, city or town. When an unpaid erroneous assessment of real estate is corrected under this section and such real estate has been sold at a delinquent land sale, the commissioner or such other official making such correction shall certify a copy of such correction to the clerk of the circuit court of his county or city; and such clerk shall note such correction in the delinquent land book opposite the entry of the tract or lot for the year or years for which such correction is made.
"In any action on application for correction under § 58.1-3980, if so requested by the applicant, the commissioner or other such official shall state in writing the facts and law supporting the action on such application and mail a copy of such writing to the applicant at his last known address."
2 Section 58.1-3984(B) provides: "In the event it comes or is brought to the attention of the commissioner of revenue of the locality that the assessment of any tax is improper or is based on obvious error and should be corrected in order that the ends of justice may be served, and he is not able to correct it under § 58.1-3981, the commissioner of the revenue shall apply to the appropriate court, in the manner herein provided for relief of the taxpayer .
Such application may include a petition for relief for any of several taxpayers."
3 See Hoffman v. Augusta County, 206 Va. 799, 801-02, 146 S.E.2d 249, 250-51 (1966); 1977-1978 Op. Va. Att'y Gen. 71, 71.
4 See §§58.1-3109(6), 58.1-3503(B).
5 Section 58.1-3271.
6 See §§58.1-3270, 58.1-3281, 58.1-3285, 58.1-3292, 58.1-
3293; see also 1984-1985 Op. Va. Att'y Gen. 305, 305 (other than in instances provided in tax statutes for commissioner to reassess property on basis of changed circumstances, commissioner has no authority to reassess value of real property). For a discussion of the instances in which a commissioner has the statutory authority to change the valuation of land between general reassessments, see 1978-1979 Op. Va. Att'y Gen. 262, 263. A commissioner of the revenue may perform the assessment of the value of real estate upon authorization of the governing body and the commissioner's consent to making the assessment. See § 58.1-3270. It is my understanding that you do not perform the real estate assessment function in your county.
7 Section 58.1-3981.
8 Section 58.1-3980(A).
9 If a commissioner discovers that the assessment of the value of the property was erroneous because it was based on an error in the amount of acreage, rather than the value of the acreage, the commissioner may correct the error pursuant to § 58.1-3981. See Op. Va. Att'y Gen.: 1996 at 204, 205; 1975-1976 at 393, 394; 1974-1975 at 506, 507-08 (last two opinions construing former § 58-1142, recodified as § 58.1-3981).
10 See Hoffman v. Augusta County, 206 Va. at 802, 146 S.E.2d at 251 (construing former § 58-1145, recodified without substantive change as § 58.1-3984 in 1984 recodification of Title 58 as Title 58.1 (see 1984 Va. Acts ch. 675, 1178, 1460-61)).
11 See 1973-1974 Op. Va. Att'y Gen. 300, 300; id. at 392, 392; id. at 397, 398. These opinions also recognize that a commissioner may not correct an assessment under § 58.1-3981 unless the error was made by the commissioner.
12 See Op. Va. Att'y Gen.: 1978-1979, supra note 6, at 262 (when land is assessed as suitable for building but later is found not to percolate, remedy is petition to court); 1973-1974, supra note 11, at 392 (when, subsequent to appraisal of property as residential, owner discovers that he is unable to obtain septic tank permit, commissioner of revenue may petition court on taxpayer's behalf if he feels that obvious error has been made).
13 In response to your inquiry as to whether, if the commissioner himself discovers the error, he may petition the court for permission to correct the error himself, § 58.1-3984(B) does not contemplate such a procedure. If a commissioner is unable to correct an erroneous assessment under § 58.1-3981 and thus files an application with the court under § 58.1-3984(B), the power to correct the assessment is placed in the court. § 58.1-3984(B) also does not require that, in order for the commissioner to file an application, the taxpayer must have previously applied to the commissioner, board of assessors or board of equalization for correction of the assessment. See §§58.1-3350, 58.1-3983.
14 See Op. Va. Att'y Gen.: 1996 at 197, 198; 1986-1987 at 300, 300 (use of word "shall" in statute generally indicates that procedures are intended to be mandatory).
15 See Op. Va. Att'y Gen.: 1984-1985 at 316, 318 (commissioner has no duty to bring judicial action under § 58.1-3984(B) when statute of limitations set out in § 58.1-3984(A) has expired); 1973-1974, supra note 11, at 300 (if commissioner is uncertain as to whether assessment is erroneous, commissioner should refrain from taking action and allow taxpayer to pursue his remedy independently).
16 An example of a clerical error would be incorrectly recording the assessed value of the property. See 1967-1968 Op. Va. Att'y Gen. 279 (recording assessed value at $4,170 rather than correct value of $417 constitutes clerical error). On the other hand, the determination of the ownership of property involves the exercise of discretion, and incorrectly listing property twice under two different names or other errors in ownership do not constitute mere clerical error. See Op. Va. Att'y Gen.: 1974-1975, supra note 9, at 507; 1973-1974, supra note 11, at 398 (incorrectly listing property to both grantee and grantor does not constitute mere clerical error).

12/28/2001

THE HONORABLE MARY LOU EBINGER
Commissioner of the Revenue for Middlesex County

You ask whether the local board of equalization may review assessments of manufactured homes.

You relate that Middlesex County has been reassessing the real estate in the county. You also relate that the county has an appointed board of equalization involved in this process.

The 1994 Session of the General Assembly amended the statutory procedure for taxing manufactured homes.1 The legislation changed all references to "mobile home(s)" in §§ 58.1-3520 and 58.1-3521 of the Code of Virginia to "manufactured home(s),"2 and added § 58.1-3522 as follows:

Manufactured homes installed according to the Uniform Statewide Building Code shall be assessed at the same time as the assessment of the real property on which the manufactured home is installed. Such homes shall be assessed in the same manner and using the same methods applied to improvements and buildings which are assessed in accordance with Article 7 (§ 58.1-3280 et seq.) of Chapter 32 of [Title 58.1].[3] Prior opinions of the Attorney General conclude that these homes should be classified and taxed as real or personal property, depending on how the common law doctrine of fixtures applies to the facts and circumstances of each case.4 The three tests applied by the Supreme Court of Virginia in determining whether an item of personal property placed upon realty becomes a fixture are: "(1) annexation of the property to the realty, (2) adaptation to the use or purpose to which that part of the realty with which the property is connected is appropriated, and (3) the intention of the parties."5 Thus, a manufactured home that has become affixed to real estate is classified and taxed as real estate and must be treated as such for all purposes, including administrative and judicial review. § 58.1-3379 requires boards of equalization to hear and consider complaints related to equalization of real estate assessments. Accordingly, an assessment of such real estate is subject to review by a board of equalization.

With respect to manufactured homes that have not become affixed to real estate and are taxed as a separate class of tangible personal property, § 58.1-3522 does not purport to change the classification of the property to real estate. Rather, this section merely requires that manufactured homes classified as tangible property be taxed in the same manner, using the same methods as real estate. Such homes, therefore, although assessed in the same manner, using the same methods, and taxed at the same rate as real estate, are still treated as tangible personal property for all other purposes, such as applications for the correction of tangible personal property assessments under § 58.1-3980. Because a board of equalization reviews real estate assessments,6 and not tangible personal property assessments, the local board of equalization would not review a tangible personal property assessment of a manufactured home.

11994 Va. Acts ch. 152, at 251.
2Id. at 251-52.
3Id. at 252.
4See Op. Va. Att'y Gen.: 1987-1988 at 576; 1985-1986 at 300; 1981-1982 at 368, 369; 1977-1978 at 427.
5Transco Corp. v. Prince William Co., 210 Va. 550, 555, 172 S.E.2d 757, 761 (1970).
6See 1987-1988 Op. Va. Att'y Gen. 543, 543-44.

12/11/2002

THE HONORABLE GENE R. ERGENBRIGHT
Commissioner of the Revenue for the City of Staunton

Issues Presented

You ask two questions related to a tax assessment of real estate that has been affected by eminent domain proceedings. First, you ask whether, as a result of the Commonwealth acquiring a portion of real estate through eminent domain proceedings in the first year of a locality's biennial real estate assessment cycle, the remaining parcel of real estate must be reassessed during that year. You ask next whether a permanent board of equalization may adjust an assessment in the second year of a biennial assessment.

Response

It is my opinion that the parcel of real estate remaining after division of the property, resulting in two or more different owners, does not have to be reassessed immediately during the first year of the biennial real estate assessment cycle. § 58.1-3290, however, requires that the remaining parcel be reassessed as of January 1 of the second year of the biennial assessment cycle, taking into consideration the value of the land as divided. Further, it is my opinion that, absent a local ordinance prohibiting such a determination, the board of equalization may hear and consider taxpayer complaints in the second year of a biennial assessment program.

Facts

As a result of an eminent domain proceeding in December 2001, a taxpayer in the City of Staunton transferred to the Department of Transportation title to certain property. The local real estate assessor prorated the taxpayer's 2001 tax assessment, which was carried forward to the 2002 tax assessment. The adjustment reflected only the land transferred and did not address whether there was a change in the per acre value of the land as a result of the transfer.

The City of Staunton has created a permanent board of equalization pursuant to § 58.1-3373. The city performs a general reassessment of real estate on a biennial basis. The last general reassessment was January 1, 2001. The assessor has indicated that the only change in assessment that should occur prior to January 1, 2003, is the pro-rata adjustment that has already taken place.

Applicable Law

The following three statutes, relating to assessments and the authority of a board of equalization, are pertinent to the questions you pose. Specifically, § 58.1-3360 provides, in part:

Any taxpayer whose lands, or any portion thereof, are in any year acquired or taken in any manner by the United States, the Commonwealth, a political subdivision, or a church or religious body, which is exempt from taxation by Article X, § 6 of the Constitution of Virginia, shall be

relieved from the payment of taxes and levies from the date of divestment of such land for that portion of the year in which the property was taken or acquired. Next, § 58.1-3290 provides, in part:

When a tract or lot becomes the property of different owners in two or more parcels, subsequent to any general reassessment of real estate in the city or county in which such tract or lot is situated each of the two or more parcels shall be assessed and shown separately upon the land books, as required by law. The commissioner of the revenue, in assessing each lot or parcel, shall assess the same at its fair market value as of January 1 of the year next succeeding the year in which the tract or lot of land becomes the property of several owners, without regard to the value at which such tract of land was assessed as a whole, but with regard to other assessments of lots, pieces or parcels of land in the city or county. [Emphasis added.] Finally, § 58.1-3378 provides that "[e]ach board of equalization shall sit at and for such time or times as may be necessary to discharge the duties imposed and to exercise the powers conferred by [Chapter 32 of Title 58.1]."1

Discussion

You first ask whether a pro-rata adjustment made to an assessment, due to acquisition of the taxpayer's property by the state during the first year of a biennial assessment, may be carried forward to the second year when such assessment does not reflect the per acre change in value, if any, of the divided parcel. § 58.1-3360 requires an abatement of real estate taxes when taxed property is acquired or taken by the state, other governmental entities or certain tax-exempt entities. The abatement is applied on a pro-rata basis for the portion of the year in which the property is acquired and belongs to the state or tax-exempt entity.2 In addition, § 58.1-3290 requires that, whenever a tract of land becomes the property of different owners in two or more parcels,3 each parcel must be reassessed and shown separately on the land books.4 The new assessment must be made, without regard to the value of the original tract as a whole, as of January 1 of the year following the year of the property's division.5 The statute, therefore, requires a reassessment of the remaining parcel of real estate. That reassessment is not required in the first year of the biennial reassessment cycle; however, § 58.1-3290 does require the remaining parcel to be reassessed as of January 1 of the second year of the biennial assessment cycle, taking into consideration the value of the land as divided.

You next ask whether a permanent board of equalization may adjust an assessment in the second year of a biennial assessment. The City of Staunton has a permanent board of equalization. § 58.1-3378 provides that "[e]ach board of equalization shall sit at and for such time or times as may be necessary to discharge the duties imposed and to exercise the powers conferred." Absent ambiguity, the plain meaning of a statute must prevail.6 The plain language of § 58.1-3378 confers upon the city's board of equalization the power to meet as necessary to discharge its duties and powers. § 58.1-3290 imposes a duty to reassess, during a certain time period, a parcel that has been divided, resulting in two or more owners. Moreover, there is no statutory language prohibiting the board of equalization from meeting in the second year of a biennial cycle. A 1988 opinion of this Office concludes that a board of equalization may not meet in the second year of the biennial cycle, because the local ordinance prohibited a meeting in the second year of a biennial assessment.7 Absent prohibitive language in a local ordinance, the city's board of equalization may meet in the second year of a biennial assessment cycle as authorized by § 58.1-3378.

Conclusion

Accordingly, it is my opinion that the parcel of real estate remaining after division of the property, resulting in two or more different owners, does not have to be reassessed immediately during the first year of the biennial real estate assessment cycle. § 58.1-3290, however, requires that the remaining parcel be reassessed as of January 1 of the second year of the biennial assessment cycle, taking into consideration the value of the land as divided. Further, it is my opinion that, absent a local ordinance prohibiting such a determination, the board of equalization may hear and consider taxpayer complaints in the second year of a biennial assessment program.8

1Chapter 32 of Title 58.1 pertains to real property taxation and encompasses §§ 58.1-3360, 58.1-3290 and 58.1-3378.

21974-1975 Op. Va. Att'y Gen. 488 (interpreting § 58-822, predecessor to § 58.1-3360).

3Following the condemnation, the parcel is divided into two or more parcels, resulting in two different owners¾ the state and the original landowner.

4See 1974-1975 Op. Va. Att'y Gen., supra note 2, at 489 (interpreting § 58-773, predecessor to § 58.1-3290).

5Id.

6See Loudoun Co. Dept. Soc. Serv. v. Etzold, 245 Va. 80, 425 S.E.2d 800 (1993).

7See 1987-1988 Op. Va. Att'y Gen. 526, 527.

8See Va. Code Ann. § 58.1-3379 (Michie Repl. Vol. 2000) (requiring boards of equalization to hear and consider complaints and to equalize assessments made by land assessors, when necessary).

03/19/2009

Mr. John C. Blair, II, Esq.
Dinwiddie County Attorney

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issue Presented

You ask whether a county board of supervisors may prevent an assessor for a general reassessment from complying with § 58.1-3300, which governs reassessment records, on the sole basis that the board of supervisors disagrees with the results of such general reassessment.

Response

It is my opinion that a county board of supervisors may not prevent a statutorily appointed professional assessor for a general reassessment from complying with § 58.1-3300 on the sole basis that the board disagrees with the results of such reassessment.

Background

You state that the Dinwiddie County (the "County") performed a general reassessment of real estate during the 2004 calendar year, which became effective January 1, 2005. Further, you advise that the County issued a request for proposal ("RFP") for a general reassessment of all County real estate to be conducted during fall of 2007 and calendar year 2008, with the effective date to be January 1, 2009 (the "2008 Reassessment"). You relate that the RFP contained the following language:

In accordance with § 58.1-3252 of the Code of Virginia, 1950, as amended, the County requires that all real estate undergo an independent, general and uniform reassessment every four years. Such reassessment shall include all taxable and tax-exempt properties with the improvements and buildings thereon, if any, and shall be based upon Fair Market Value. All manufactured housing/mobile homes must be appraised in the same manner as real estate. The reassessment of all properties shall begin in the Fall of 2007 and be completed by the end of December, 2008 to become effective January 1, 2009.

You note the County reviewed the RFP submissions, interviewed the candidates, and by resolution dated October 1, 2007, the Dinwiddie County Board of Supervisors awarded the contract to perform the 2008 Reassessment. The contract, by reference, incorporated the provisions of the RFP. By resolution dated August 19, 2008, the Board appointed the project supervisor of the firm that received the contract as the County's assessor for the 2008 Reassessment. On December 23, 2008, that assessor certified the land book and filed it with the clerk of the circuit court. You relate that the Board does not agree with the result, generally believing that the assessments are too high. Therefore, you ask whether the Board may prevent the assessor from complying with § 58.1-3300.

Applicable Law and Discussion

The power of a local governing body, unlike that of the General Assembly, "must be exercised pursuant to an express grant"1 because the powers of a county "are limited to those conferred expressly or by necessary implication."2 "If the power cannot be found, the inquiry is at an end."3 The Dillon Rule requires a narrow interpretation of all powers conferred on local governments since they are delegated powers.` Therefore, any doubt as to the existence of power must be resolved against the locality!

Chapter 32 of Title 58.1, §§ 58.1-3200 through 58.1-3389, comprehensively governs the assessment and reassessment of real estate for local taxation. Under Chapter 32, a local governing body has the option to provide for the assessment and reassessment of :real estate by appointing a real estate assessor or a board of assessors. The assessor ascertains and assesses the fair market value of all assessable lands and lots.' The assessor is required to complete the general reassessment no later than December 31 of the year of the reassessment. Section 58.1-3300 requires that:

As soon as the persons, or officers, designated under the provisions of Article 6 (§ 58.1-3270 et seq.) herein have completed the reassessment, they shall make two copies of such record, in the form in which the land books are made out, and shall certify on oath that no assessable real estate is omitted and that there its no error on the face of such record. Such persons, or officers, designated as aforesaid shall then file the original of such reassessment in the office of the circuit court clerk of the city or county, who shall preserve the same in his office; and he or they shall deliver one copy of such reassessment to the commissioner of the revenue of the city or county and one copy to the local board of equalization of such city or county. For cities having an additional court for the recordation of deeds, one extra copy of such reassessment, embracing real estate the conveyance of which is required to be recorded in the clerk's office of such additional court, shall be made and filed in such circuit court clerk's office.

Such persons or officers shall at the same time forward to the Department of Taxation a copy of the recapitulation sheets of such reassessment.

In lieu of complying with the foregoing provisions of this section, the person or persons appointed by the governing body to perform the annual or biennial reassessment of real estate set forth in §§ 58.1-3251 and 58.1-3253 shall sign the land book attesting to the valuations contained therein resulting from such assessment.

The General Assembly has not authorized a county to appoint an assessor to begin to undertake the general reassessment process and then prevent such assessor from complying with the requirements of § 58.1-3300 because the county's board of supervisors disagrees with the reassessment results. Prior opinions of the Attorney General similarly conclude that a board of supervisors has no power to change the assessment of real property as ascertained by the assessor during a general reassessment and has no authority to raise or lower the ratio of assessment of real property.9

The application of the Dillon Rule in the Commonwealth requires a narrow interpretation of all powers conferred on local governments because any such powers are delegated powers.10 Therefore, I must conclude that a county board of supervisors is without statutory authority to prevent the completion of an initiated general reassessment based on such board's disagreement with the assessment results.

Conclusion

Accordingly, it is my opinion that a county board of supervisors may not prevent a statutorily appointed professional assessor for a general reassessment from complying with § 58.1-3300 on the sole basis that the board disagrees with the results of such reassessment.

1:213; 1:941/09-008
1Nat'1 Realty Corp. v. Va. Beach, 209 Va. 172, 175, 163 S.E.2d 154, 1515 (1968).
2Bd. of Supvrs. v. Home, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975) (noting corollary to Dillon Rule).
3Commonwealth v. County Bd., 217 Va. 558, 575, 232 S.E.2d 30, 41 (1977).
4See Bd. of Supvrs. v. Countryside Invest. Co., 258 Va. 497, 504-05, 522 S.E.2d 610, 613-14 (1999) (holding that county board of supervisors does not have unfettered authority to decide what matters to include in subdivision ordinance; must include requirements mandated by Land Subdivision and Development Act and may include optional provisions contained in act); Op. Va. Att'y Gen: 2002 at 77, 78; 1974-1975 at 403, 405.
52A EUGENE MCQUILLEN, THE Law OF MUNICIPAL CORPORATIONS § 10.19, at 369 (3d ed. 1996); see also Op. Va. Att'y Gen.: 2002 at 83, 84; 2000 at 75, 76.
6See VA. CODE ANN. § 58.1-3253(A) (Supp. 2008) (discussing role of full-time real estate appraiser or assessor relating to biennial reassessment); § 58.1-3271 (Supp. 2008) (authorizing appointment of board of real estate assessors or real estate appraiser to conduct annual or biennial assessment); 1984-1985 Op. Va. Att'y Gen. 304, 304 (interpreting § 58-778.1, predecessor to § 58.1-3253, and concluding that governing body may establish real estate assessment department to conduct biennial assessment); id. at 305, 306 n.l, (interpreting § 58-778.1 and concluding that governing body may employ full-time appraiser or assessor to conduct biennial assessment).
7See generally §§ 58.1-3280 to 58.1-3295 (2004 & Supp. 2008).
8 See § 58.1-3257(A) (Supp. 2008).
90p. Va. Att'y Gen.: 1975-1976 at 374, 375; 1973-1974 at 395, 396; 1963-1964 at 17, 17; see also 1975-1976 Op. Va. Att'y Gen. 375, 377-78 (concluding that commissioner of revenue cannot change value of real estate ascertained at general reassessment; locality may not increase tax rate applicable to public service corporation property absent enabling legislation).
10See supra note 4 and accompanying text.

03/17/2010

THE HONORABLE M. KIRKLAND COX
Member, House of Delegates

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issue Presented

You ask whether a city that assesses real property on a twelve-month basis has the authority to reassess, such real property before the twelve-month period has expired and to change the assessed value of a piece of property.

Response

It is my opinion that the General Assembly has not authorized a city to conduct more than one general reassessment of real property in any one year. A taxpayer, however, may be required to pay a higher corrected assessment in some limited circumstances.

Background

You relate that the city of Petersburg conducts real property assessments once a year, normally in April. You believe that once the yearly assessment is complete, the property will not be assessed until the next annual cycle is due in twelve months. You note a situation where a person's real property assessment value was raised eight months into the initial twelve-month assessment period. Further, you report that such person received notification through a supplemental bill from the City's assessor.

Therefore, you seek clarification regarding the authority for such a reassessment prior to the end of the annual assessment period. Specifically, you ask whether such early reassessment would be legal when the locality assesses real property on a twelve-month basis.

Applicable Law and Discussion

The power of a local governing body, unlike that of the General Assembly, "must be exercised pursuant to an express grant" 1 because the powers of a locality "are limited to those conferred expressly or by necessary implication."2 "If the power cannot be found, the inquiry is at an end."3 The Dillon Rule requires a narrow interpretation of all powers conferred on local governments since they are delegated powers, 4 Therefore, any doubt as to the existence of power must be resolved against the locality.5

Chapter 32 of Title 58.1,§§ 58.1-3200 through 58.1-3389, comprehensively governs the assessment and reassessment of real estate for local taxation. A general reassessment is a major undertaking, requiring a locality "to ascertain all the real estate in his county or city, as the case may be, and the person to whom the same is chargeable with taxes on that day."6 The general reassessments must determine the fair market value of the property.7

The General Assembly has provided some flexibility to localities with respect to the frequency of reassessments.8 Section 58.1-3250 provides the default rule for the general reassessment cycle for cities as every two years. For counties, the default cycle is every four years.9 Section 58.1-3253(B), however, provides that cities and counties may adopt an ordinance that provides for an annual assessment.

Consistent with this flexibility, the General Assembly has also authorized the governing body of a locality to direct a reassessment in any- given year. Section 58.1-3254 provides, in pertinent part, that:

Notwithstanding any other provision of [Article 5} {"°} to the contrary, there may be a general reassessment of real estate in any county or city in any year if the governing body so directs by a majority of all the members thereof, by a recorded yea and nay vote.

This provision does not authorize multiple general reassessments in a particular year. Rather, there may be "a" singular, general reassessment: in any year, provided that the governing body so directs by majority vote. The plain import of § 58.1-32`.14 is to permit cities and counties that do not conduct a general reassessment on an annual basis to disrupt the two-year, four-year, or other cycle and allow for a general reassessment to occur. The General Assembly does not contemplate or permit a general reassessment more frequently than once per year.

Although a locality is limited in its ability to conduct a general reassessment in any one year, an individual taxpayer may find his property reassessed at a higher value in some limited circumstances. One of those situations involves action by a board of equalization" that results in a higher assessment. 12 Another situation that may result in an increased assessment prior to the general reassessment cycle involves the correction of a factual or clerical error in an assessment. 13

Conclusion

Accordingly, it is my opinion that the General Assembly has not authorized a city to conduct more than one general reassessment of real property in any one year. A taxpayer, however, may be required to pay a higher corrected assessment in some limited circumstances.

1:213; 1:911/10-003

1)Nat'l Realty Corp. v. Va. Beach, 209 Va. 172, 175, 163 S.E.2d 154, 156 (1968).

2)Bd. of Supvrs. v. Home, 216 Va. 113, a 17, 215 S.E.2d 453, 455 (1975) (noting corollary to Dillon Rule).

3)Commonwealth v. County Bd., 217 Va.. 558, 575, 232 S.E.2d 30, 41 (1977).

4)See Bd. of Supvrs. v. Countryside Invest. Co., 258 Va. 497, 504-05, 522 S.E.2d 610, 613-14 (1999) (holding that county board of supervisors does not have unfettered authority to decide what matters to include in subdivision ordinance; must include requirements mandated by Land Subdivision and Development Act and may include optional provisions contained in act); Op. Va. Att'y Gen: 2002 at 77, 78; 1974-1975 at 403, 405.

5)2A EUGENE MCQUILLEN, THE LAW of MUNICIPAL CORPORATIONS § 10.19, at 369 (3d ed. 1996); see also Op. Va. Att'y Gen.: 2002 at 83, 84; 2000 at 75., 76.

6)See VA. CODE ANN. § 58.1-3281 (2009).

7)See § 58.1-3201 (2009).

8)See §§ 58.1-3250 to 58.1-3261 (2009).

9)See § 58.1-3252.

10)Article 5, Chapter 32 of Title 58.1, §§ 58.1-3250 to 58.1-3261 governs the reassessment and assessment cycles in the Commonwealth.

11)See § 58.1-3370(A) (2009) (requiring appointment of board of equalization following general reassessment unless locality has permanent board).

12)See §§ 58.1-3379(A), 58.1-3381(A) (2009) (providing that board of equalization my increase assessments); § 58.1-3385 (2009) (providing that commissioner of revenue may make supplemental assessment based on action of board of equalization).

13)See § 58.1-3981 (2009) (allowing for correction of erroneous assessments).

04/26/2010

THE HONORABLE SAMUEL W. SWANSON, JR.
Pittsylvania County Commissioner of the Revenue

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issue Presented

You ask whether certain deposits of clay and sand are subject to assessment as subsurface minerals for purposes of local real properly taxes. If so, you ask at what point in time the assessment of such clay and sand would be appropriate. Finally, you ask whether the capitalized income strength method of valuation for assessing subsurface minerals is appropriate under §§ 58.1-3286 and 58.1-3287.

Response

It is my opinion that clay and sand that are in place, i.e., beneath the surface of real property, are minerals that are subject to local taxation whether or not the properly is under development. It further is my opinion that the initial discovery of a mineral generally is the time at which assessment would occur. Finally, it is my opinion that the income capitalization methodology that you describe would comply with §§ 58.1-3286 and 58.1-3287.

Background

You indicate that a brick company intends to extract clay deposits from a 1.,200-acre tract of land in Pittsylvania County that the company recently purchased. You state that at the present time no mining activity has occurred. You also indicate that the owner of certain land has been dredging sand from the bed of a river located on his property. Further, you relate that the Virginia Department of Mines, Minerals, and Energy has identified this landowner as being engaged in production.

You state that you use a capitalization rate obtained from the contractor that performs Pittsylvania County's reassessments to ascertain the present value of undeveloped minerals based on projected future earnings. You indicate that you adjust this capitalization rate only in the year in which the county reassessment becomes final; however., you assess undeveloped minerals annually using the prevailing capitalization rate and year-to-year variances in the tonnage of materials reported to the Department of Mines as having been extracted.

Applicable Law and Discussion

Pursuant to Article X, § 4 of the Constitution of Virginia and § 58.1-3000, localities in Virginia have the authority to tax real estate, coal, and other mineral lands.1 Therefore, whether a locality may impose real estate taxes on deposits of clay and sand depends on whether these substances constitute "minerals."

A 1977 opinion of the Attorney General ("1977 Opinion") has analyzed a similar question regarding a tract of land utilized as a stone quarry.2. The 1977 Opinion concluded that stone constitutes a mineral subject to local assessment.3 Further, the 1977 Opinion concluded that when the General Assembly enacted § 58-744, it contemplated the definition of the term "mineral" that the Supreme Court of Virginia tacitly approved.4 In interpreting the term, the Virginia Supreme Court noted that "`[t]he word "mineral," in the popular sense, means those inorganic constituents of the earth's crust which are commonly obtained by mining or other process for bringing them to the surface for profit.'"5 Therefore, stone is a mineral when it is extracted from land for profit.6

Based on this reasoning, clay and sand deposits would also be "minerals" subject to local real property tax assessment.7 It is clear that the clay and sand at issue will be extracted for commercial purposes. Although Title 58.1 does not define the term "mineral," Title 45.1, which governs mines and mining in the Commonwealth, contains several definitions of "mineral."8 I note that § 45.1-161.8 specifically includes clay and sand in the definition of "mineral."9 Therefore, it is my opinion that clay and sand constitute "minerals" and are subject to local assessment.

You next ask at what point clay, sand, and other minerals become subject to assessment. Article X, § 4 of the Virginia Constitution requires taxable real estate, including mineral lands, to be "assessed for local taxation in such manner and at such times as the General Assembly may prescribe by general law." Sections 58.1-3286 and 58.1-3287 contain the requirements for assessing mineral lands. '° Section 58.1-3287 mandates that in any year when a locality conducts a general reassessment of real estate, the assessor must assess the fair market value of mineral lands and minerals separately from other real estate. Such assessment must be done in accordance with § 58.1-3286, which requires assessments of mineral lands to be based upon:

1. The area and the fair market value of such portion of each tract as is improved and under development;

2. The fair market value of the improvements upon each tract; and

3. The area and fair market value of such portion of each tract not under development.

In each of the years between ,general reassessments, § 58.1-3287 requires commissioners of the revenue ("commissioners") to "adjust [:these] assessed values in such manner as to reflect such changes as may have occurred during the preceding year, especially such changes as may have operated to increase or decrease" any of the values.

One type of change that has been recognized as potentially operating to increase or decrease the value of a parcel of real estate, within the meaning of § 58.1-3287, is the initial discovery of minerals thereon.11 Thus, minerals should be separately and specially assessed upon their discovery, whether that occurs in the course of a general reassessment of real estate or in the years between general reassessments.12. Furthermore, I note that § 58.1-3286 specifically requires commissioners to determine the "fair market value of such portion of each tract not under development." The fact that no mining operations have occurred does not shield the minerals underlying a parcel from assessment.

Finally, you ask whether the income capitalization method that you employ to assess the value of such minerals complies with §§ .'58.1-3286 and 58.1-3287. Section 58.1-3286 requires that commissioners assess mineral lands at their fair market value and to record such mineral assessments separately from the assessed fair market value of the land overlying the minerals. The only additional mandate on such assessments imposed by § 58.1-3287 is the directive that commissioners adjust the values of minerals included in general reassessments based on "such changes as may have occurred during the preceding year."

The Virginia Supreme Court has "defined the fair market value of a property as its sale price when offered for sale `by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it.'"13 I note that there are three generally accepted approaches for ascertaining the fair market value of real property: "the cost method, the market method, and the income capitalization method."14 The income capitalization approach to valuation is recognized as a useful method of ascertaining the fair market value of income-producing property such as mineral rights.15 Under this approach, the property's fair market value derives from an estimate of the cash flows that the property will generate, to which a multiplier ("capitalization rate"), which is based on the average rate of return of investment from similar properties, is applied to arrive at the present capital value of the property. 16 In my opinion, reliance upon the tonnage of extracted minerals reported to the Department of Mines, Minerals and Energy is a reasonable means of estimating the income that would accrue to an owner in mineral land inasmuch as the depletion of minerals beneath the land's surface would diminish the amount of material that the owner would be able to offer for sale.

Sections 58.1-3286 and 58.1-3287 do not prescribe which valuation methodology a commissioner must employ to ascertain the fair market value of mineral lands. Similarly, I find no law that specifically requires, a commissioner who employs an income capitalization approach to adjust the capitalization rate on an annual basis. Since §§ 58.1-3286 and 58.1-3287 do not mandate a specific methodology by which a commissioner is to ascertain such fair market value, it is my opinion that the method for determination is within his discretionary authority.17 Of course, any method a commissioner uses must be reasonable.18 I note, however, that the accuracy of a capitalization rate, related to calculation of the time value of money versus the compensation factor for the risk associated with a venture, contains an element of subjectivity. 19 Therefore, a party aggrieved by an assessment derived from a static capitalization rate may be able to present facts that would undermine the validity of the prevailing rate based on changes in conditions that occur in years between general reassessments.20

Conclusion

Accordingly, it is my opinion that clay and sand that are in place, i.e., beneath the surface of real property, are minerals that are subject 1:o local taxation whether or not the property is under development. It further is my opinion that the initial discovery of a mineral generally is the time at which assessment would occur. Finally, it is my opinion that the income capitalization methodology that you describe would comply with §§ 58.1-3286 and 58.1-3287.

1)See 1993 Op. Va. Att'y Gen. 221, 224, cited in 2007 Op. Va. Att'y Gen. 138, 140 n. 1.
2)See 1976--1977 Op. Va. Att'y Gen. 267, 267.
3)Id. at 268 (interpreting § 58-744, predecessor to § 58.1-3286).

4)Id. at 267-68.
5)Warren v. Clinchfield Coal Corp., 166 Va. 524, 528, 186 S.E.2d 20, 22 (1936) (citation omitted).
6)See 1976--1977 Op. Va. Att'y Gen., supra note 2, at 268.
7)You also inquire whether sand that is dredged from a riverbed is subject to assessment pursuant to §§ 58.1-3286 and 58.1-3287 to the same degree as minerals that are "mined" in the traditional sense. I note that neither of these statutes expressly or impliedly draws a distinction regarding the method for mining or extraction of minerals. Furthermore, since the General Assembly intended that these statutes require the assessment of "minerals," as defined by the Warren court, then it is clear that the assessment of minerals is not limited to a particular means of extraction or mining. See supra notes 4--5 and accompanying text. The Warren court endorsed a definition of "minerals" that included "`inorganic constituents of the earth's crust which are commonly obtained by mining or other process.'" Warren, 166 Va. at 528, 186 S.E.2d at 22 (emphasis added) (citation omitted). Therefore, in my opinion, the sand deposits that you describe. are subject to assessment.

8)See Branch v. Commonwealth, 14 Va. App. 836, 839, 419 S.E.2d 422, 425 (1992) (noting that because Code is one body of law, sections using same phraseology may be consulted to determine meaning of statute).
9) I also note that § 45.1-229 defines the term "other minerals" with the same language used by § 45.1-161.8 to define the term "mineral." See also Va.. CODE ANN. § 45.1-161.292:2 (2002) (defining "mineral" with same language as § 45.1-161.8); § 45.1-180 (2002) (defining "mineral," related to requirement for permit for mining operations other than drilling or mining of coal, as "[o]re, rock, and any other solid homogenous crystalline chemical element of compound that results from the inorganic processes of nature other than coal").

10)See 1992 Op. Va. Att'y Gen. 178, 180.
11) Id
12) See id. at 181 n. 1.

13)Keswick Club, L.P. v. County of Albemarle, 273 Va. 128, 136, 639 S.E.2d 243, 247 (2007) (quoting Tuckahoe Woman's Club v. City of Richmond, 199 Va. 734, 737, 101 S.E.2d 571, 574 (1958)).
14)Stephen C. Gara & Craig J. Langstraat, Property Valuation for Transfer Taxes: Art, Science, or Arbitrary Decision?, 12 AKRON TAX J. 125, 143 (1996); see also Keswick Club, 273 Va. at 137, 639 S.E.2d at 248 (recognizing "the cost approach, income approach, and sales approach").
15) Gara & Langstraat, supra note 14, at a43.
16) See 4 POWELL ON REAL PROPERTY § 34A.06 (Michael Allan Wolf, ed., Matthew Bender & Co., Inc., 2009) [hereinafter POWELL]; Gara & Langstraat, :supra note 14, at 143.
17)See Va. Beach v. Hay, 258 Va. 217, 221, 518 S.E.2d 314, 316 (1999) (holding that when legislature grants power to local government, but does not specify method of implementing power, local government's choice regarding implementation of conferred power will be upheld, provided method chosen is reasonable); see also 2005 Op. Va. Att'y Gen. 147, 148 and opinions cited therein (noting that act did not specify method for compliance, but left to discretion of agency; noting also that commissioners, as constitutional officers, are vested with authority and power to administer operations of their offices in manner and to extent they see fit).

18) Hay, 258 Va. at 221, 518 S.E.2d at 31 ~6.
19) See 1 POWELL, supra note 16, at § 1013.06.

20)See VA. CODE ANN. § 58.1-3350 (2009) (providing that any person aggrieved by any assessment may apply for relief to board of assessors or to board of equalization or may apply for relief to appropriate circuit court for correction).

12/22/2010

THE HONORABLE DEBORAH F. WILLIAMS
Spotsylvania County Commissioner of the Revenue

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issues Presented

You inquire regarding three issues relating to the issuance of refunds of local taxes to taxpayers who already have paid assessments that local tax officials later reduce through administrative procedures. Specifically, you ask what § 58.1-3981(26,) requires a local commissioner of the revenue to tender to the board of supervisors in order to "certify" the commissioner's determination that a local tax assessment was erroneous. You also seek guidance as to the role of a county attorney in providing his "consent" to the commissioner of the revenue's determination, as required by that subsection. You further ask to what extent the commissioner of the revenue lawfully may provide an affected taxpayer's local tax filings, with attached business and financial records to the county attorney. Finally, you ask whether a county attorney's review of and consent to a downward adjustment of a local real estate tax assessment by the county's board of equalization is a necessary predicate to the county's issuance of a refund of excess taxes that a taxpayer initially paid.

Response

It is my opinion that a county commissioner of the revenue's "certification" of a correction of a local tax assessment for purposes of § 58.1-3981 (A) means that the commissioner should provide written verification that he has determined that tire original local tax assessment paid by the affected taxpayer was erroneous. Further, it is my opinion that § 58.1-3(A)(2) authorizes a county commissioner of the revenue to supply to the attorney for his county any information that is necessary to enable the attorney to make an informed decision as to whether to consent to the commissioner of the revenue's determination. Finally, I am of the opinion that a county attorney's consent to a reduction of a real estate tax assessment by a county board of equalization is not a prerequisite to the county's issuance of a refund', of excess taxes.

Background

You report that in situations where you have determined that a local tax assessment issued by your office was erroneous, the attorney for your county has requested information concerning the affected taxpayer's tax filings. This request has included any business or financial records attached to those filings. You also state that the county attorney has directed you to prepare a "certification" of an order issued by your county's board of equalization that will reduce the value of a real estate tax assessment, ostensibly to enable your county's officials to process and approve a refund of taxes resulting from the board of equalization's adjustment to the assessment.

Applicable Law and Discussion

Section 58.1-3981 establishes the procedures a locality's officials and governing body must follow where the locality's commissioner of the revenue determines that: a local tax assessment he previously issued is erroneous. Subsection (A) of that statute states, in relevant part::

If the commissioner of the revenue . . . is satisfied that he has erroneously assessed [a taxpayer who applies to the commissioner of the revenue for correction of a local tax assessment, pursuant to § 58.1-3980] with any such tax, he shall correct such assessment. If the assessment exceeds the proper amount, he shall exonerate the applicant from the payment of so much as is erroneously charged if not paid into the treasury of the county or city. If the assessment has been paid, the governing body of the county or city shall, upon the certificate of the commissioner with the consent of the town, city or county attorney, or if none, the attorney for the Commonwealth, that such assessment was erroneous, direct the treasurer of the county, city or town to refund the excess to the taxpayer.[1]

Interpreting this statutory language, a circuit court concluded that a county board of supervisors lacks the statutory authority to correct local tax assessments made by the county's commissioner of the revenue, and, as a result, "a refund can only be authorized and directed to be paid by the [t]reasurer after the [c]ommissioner corrects the assessment and certifies the fact of the erroneous assessment to the governing body of the county."2
With regard to the General Assembly's intended meaning of the word "certificate" in § 58.1-3981(A), a prior opinion of the Attorney General construed the use of the term "certified" in § 58.1-3981(E) according to the ordinary meaning of the word "certify," which is "'to authenticate or verify in writing.'"3 Because subsections (A) and (E) of § 58.1-3981 deal with essentially the same subject, i.e., confirmation of the correction of a local tax assessment by a local commissioner of the revenue or equivalent assessing official, their uses of the terms "certificate" and certified," respectively, should be construed in pari materia, so as to harmonize the general tenor of the statute as a whole.4 Applying this maxim to the court's interpretation of § 58.1-3981(A), I conclude that a county commissioner of the revenue's "certificate" under that subsection entails his written verification. to the board of supervisors that he has determined an assessment to be erroneous.

In addition to requiring a local commissioner of the revenue to certify that an assessment is erroneous, § 58.1-3981(A) further provides that the consent of the attorney for the locality is necessary before the governing body authorizes the local treasurer to refund the excess taxes. As a result, the Code imposes a duty on the attorney for a locality that is complementary to the duties of the locality's commissioner of the revenue and governing body. Section 58.1-3(A)(2) permits disclosure of otherwise confidential taxpayer information "in the: line of duty under the law. ,5 The commissioner of the revenue, therefore, lawfully may disclose taxpayer information acquired in the performance of his tax-related duties to personnel of the locality who have a legal responsibility concerning the administration of local taxes. Prior opinions of the Attorney General indicate that a commissioner of the revenue may disclose taxpayer information to local officials charged with tax-related duties under the "line of duty" exception to § 58.1-3 to the extent that such information is "necessary for the performance of the officers' or employees' duties."6 Moreover, because § 58.1-3981(A) places upon the attorney for a locality a duty either to consent to or to disagree with a commissioner of the revenue's determination that a local tax assessment was erroneous, I conclude

that a county commissioner of the revenue lawfully may provide the county attorney with such information as is necessary for the county attorney to make an informed decision whether or not to consent to the commissioner's determination.

In contrast to the two-step procedure outlined above, the statutory process for adjusting local real estate tax assessments by local boards of equalization does not require a second layer of approval by the county attorney. Instead, when a board of equalization determines that an assessment of the value of taxable real estate should be decreased, it has the duty to enter into the board's minutes an order giving effect to that determination.7 The board of equalization's order decreasing an assessment entitles the owner of the affected real estate to a refund of monies paid in excess of the: reduced assessment and no further action by the commissioner of the revenue is necessary.8 Therefore, 1 conclude that a commissioner of the revenue has no power or duty to certify an adjustment to a real estate tax assessment ordered by the board of equalization, and consequently, there is no certification by the commissioner to which the attorney for the locality must consent before the treasurer may issue a refund of excess taxes paid by the affected taxpayer.

Conclusion

Accordingly, it is my opinion that a county commissioner of the revenue's "certification" of a correction of a local tax assessment for purposes of §.58.1-3981(A) entails the commissioner's written verification that he has determined that the original local tax assessment paid by the affected taxpayer was erroneous. Further, it is my opinion that § 58.1-3(A)(2) authorizes a county commissioner of the revenue to supply to the attorney for his county any information that is necessary to enable the attorney to make an informed decision as to whether to consent to the commissioner of the revenue's determination, pursuant to § 58.1-3981(A). Finally, I am of the opinion that a county attorney's consent to a reduction of a real estate tax assessment by a county board of equalization is not a prerequisite to the county's issuance of a refund of excess taxes.

l VA. CODE ANN. § 58.1-3981(A) (2009) (emphasis added).
2 ITT Teves Am. Automotive v. Bd. of Supervisors, 45 Va. Cir. 39, 44 (Culpeper County 1997).
3 2006 Op. Va. Att'y Gen. 200, 202 (citing McKeon v. Commonwealth, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970) and BLACK'S LAW DICTIONARY 241 (8th ed. 2004))
4 See Alston v. Commonwealth, 274 Va. 759, 769, 652 S.E.2d 456, 462 (2007) (citing Prillaman v. Commonwealth, 199 Va. 401, 405-06, 100 S.E.2d 4, 7 (1957)).
5. See 2005 Op. Va, Att'y Gen. 147, 149 (citing 1999 Op. Va. Att'y Gen. 185, 186; 1974-1975 Op. Va. Att'y Gen. 523, 524).
6.Id. (citing 1999 Op. Va. Att'y Gen. 185, 186).
7 See §§ 58.1-3381 & -3384 (2009).
8 See § 58.1-3385 (2009) ("In case of a decrease in valuation, the order of the board shall entitle the taxpayer to an exoneration from so much of the assessment as exceeds the proper amount, if the taxes have not been paid by him and, in case the taxes have been paid, to a refund of so much thereof as is erroneous").

Chapter

8

ARTICLE 14 CODE SECTIONS
BOARDS OF EQUALIZATION

58.1-3321.	Effect on rate when assessment results in tax increase; public hearings.
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§ 58.1-3321. Effect on rate when assessment results in tax increase; public hearings.

A. When any annual assessment, biennial assessment or general reassessment of real property by a county, city or town would result in an increase of 1 percent or more in the total real property tax levied, such county, city, or town shall reduce its rate of levy for the forthcoming tax year so as to cause such rate of levy to produce no more than 101 percent of the previous year's real property tax levies, unless subsection B of this section is complied with, which rate shall be determined by multiplying the previous year's total real property tax levies by 101 percent and dividing the product by the forthcoming tax year's total real property assessed value. An additional assessment or reassessment due to the construction of new or other improvements, including those improvements and changes set forth in § 58.1-3285, to the property shall not be an annual assessment or general reassessment within the meaning of this section, nor shall the assessed value of such improvements be included in calculating the new tax levy for purposes of this section. Special levies shall not be included in any calculations provided for under this section.

B. The governing body of a county, city, or town may, after conducting a public hearing, which shall not be held at the same time as the annual budget hearing, increase the rate above the reduced rate required in subsection A above if any such increase is deemed to be necessary by such governing body.

Notice of the public hearing shall be given at least 30 days before the date of such hearing by the publication of a notice in (i) at least one newspaper of general circulation in such county or city and (ii) a prominent public location at which notices are regularly posted in the building where the governing body of the county, city, or town regularly conducts its business, except that such notice shall be given at least 14 days before the date of such hearing in any year in which neither a general appropriation act nor amendments to a general appropriation act providing appropriations for the immediately following fiscal year have been enacted by April 30 of such year. Any such notice shall be at least the size of one-eighth page of a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18-point. The notice described in clause (i) shall not be placed in that portion, if any, of the newspaper reserved for legal notices and classified advertisements. The notice described in clauses (i) and (ii) shall be in the following form and contain the following information, in addition to such other information as the local governing body may elect to include:

NOTICE OF PROPOSED REAL PROPERTY TAX INCREASE

The (name of the county, city or town) proposes to increase property tax levies.

1. Assessment Increase: Total assessed value of real property, excluding additional assessments due to new construction or improvements to property, exceeds last year's total assessed value of real property by . . . . . percent.

2. Lowered Rate Necessary to Offset Increased Assessment: The tax rate which would levy the same amount of real estate tax as last year, when multiplied by the new total assessed

value of real estate with the exclusions mentioned above, would be $. . . . . per $100 of assessed value. This rate will be known as the "lowered tax rate."

3. Effective Rate Increase: The (name of the county, city or town) proposes to adopt a tax rate of $. . . . . per $100 of assessed value. The difference between the lowered tax rate and the proposed rate would be $. . per $100, or. . . . . percent. This difference will be known as the "effective tax rate increase."

Individual property taxes may, however, increase at a percentage greater than or less than the above percentage.

4. Proposed Total Budget Increase: Based on the proposed real property tax rate and changes in other revenues, the total budget of (name of county, city or town) will exceed last year's by. . . . . percent.

A public hearing on the increase will be held on (date and time) at (meeting place).

C. All hearings shall be open to the public. The governing body shall permit persons desiring to be heard an opportunity to present oral testimony within such reasonable time limits as shall be determined by the governing body.

D. The provisions of this section shall not be applicable to the assessment of public service corporation property by the State Corporation Commission.

E. Notwithstanding other provisions of general or special law, the tax rate for taxes due on or before June 30 of each year, may be fixed on or before April 15 of that tax year.

(Code 1950, § 58-785.1; 1975, c. 622; 1979, c. 473; 1980, c. 396; 1981, c. 212; 1984, c. 675; 1990, c. 579; 2007, c. 948; 2009, cc. 30, 511.)

§ 58.1-3331. Public disclosure of certain assessment records.

A. All property appraisal cards or sheets within the custody of a county, city or town assessing officer, except those cards or sheets containing information made confidential by § 58.1-3, shall be open for inspection, after the notice of reassessment is mailed as provided in § 58.1-3330, the normal office hours of such official by any taxpayer, or his duly authorized representative, desiring to review such cards or sheets.

B. Any taxpayer, or his duly authorized representative, whose real property has been assessed for taxation shall, upon request, be allowed to examine the working papers used by any such assessing official in arriving at the appraised and assessed value of such person's land and any improvements thereon.

C. Upon request of any taxpayer or his duly authorized representative, the assessing officer of the governing body shall make available information regarding the methodology employed in the calculation of a property's assessed value to include the capitalization rate used to determine the property's value, a list of comparable properties or sales figures

considered in the valuation, and any other market surveys, formulas, matrices, or other factors considered in determining the value of the property. Nothing in this section shall be construed to require disclosure of information that is prohibited from disclosure pursuant to §§ 58.1-3 and 58.1-3294.

D. The assessing officer of the governing body may fix and promulgate a limited period within normal office hours when such records shall be available for inspection and copying, but such period of time may not be less than four hours per day on Monday through Friday, except on such days when the office is otherwise closed.

E. Notwithstanding any special or general laws to the contrary, in any appeal of the assessment of residential property filed by a taxpayer as an owner of real property containing less than four residential units (i) to the board of equalization pursuant to § 58.1-3379, or (ii) to circuit court pursuant to § 58.1-3984, the assessing officer shall send the taxpayer a written notice provided for in this subsection. Such notice shall be on the first page of such notice and be in bold type no smaller than fourteen points and mailed to, or posted at, the last known address of the taxpayer as shown on the current real estate tax assessment books or current real estate tax assessment records. Notice under this subsection shall satisfy the notice requirements of this section. In an appeal before the board of equalization, such written notice may be contained in the written notice of the hearing date before the board. For all applicable assessments on or after January 1, 2012, such written notice shall: (a) be given at least 45 days prior to the hearing of the taxpayer's appeal; (b) include a statement informing the taxpayer of his rights under this section to review and obtain copies of all of the assessment records pertaining to the assessing officer's determination of fair market value of such real property; and (c) advise the taxpayer of his right to request that the assessor make a physical examination of the subject property.

F. If, within at least five days prior to any action by a court under § 58.1-3984 or by a board of equalization under § 58.1-3379, the assessing officer fails to disclose or make available for inspection any information required to be disclosed or made available for inspection and copying under this section, then the assessing official and the applicable local government shall not be allowed to introduce such information or use it in any other manner in any such appeal.

(Code 1950, § 58-792.02; 1975, c. 615; 1979, c. 577; 1980, c. 124; 1983, c. 161; 1984, c. 675; 2010, c. 552; 2011, c. 184, 232.)

§ 58.1-3370. Appointment.

A. The circuit court having jurisdiction within each city and each county other than those counties operating under § 58.1-3371 shall, in each tax year immediately following the year a general reassessment or annual or biennial assessment is conducted in such city or county, appoint for such city or county a board of equalization of real estate assessments, unless such county or city has a permanent board of equalization appointed according to law.

B. The term of any board of equalization appointed under the authority of this section shall expire one year after the effective date of the assessment for which they were appointed.

(Code 1950, § 58-895; 1975, c. 575; 1979, c. 577; 1983, c. 304; 1984, cc. 273, 675; 1991, c. 240.)

§ 58.1-3371. Appointment in counties with county executive or county manager form of government.

Unless the county has a permanent board of equalization appointed according to law, the board of supervisors or other governing body of any county operating under the county executive form of government, or the county manager form of organization and government provided for in Chapter 5 (§ 15.2-500 et seq.) or Chapter 6 (§ 15.2-600 et seq.) of Title 15.2, shall for the year following any year a general reassessment or annual or biennial assessment is conducted create and appoint for the county a board of equalization of real estate assessments. For any county operating under the county executive form of government, the board shall be composed of not less than three nor more than the number of districts for the election of members of the board of supervisors in the county. In addition to such members, at the request of the local governing body, the circuit court for the locality may appoint not more than two alternate members. The qualifications, terms, and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any proceeding at a meeting shall notify the chairman of the board of equalization at least 24 hours prior to the meeting of such fact. The chairman may select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any proceeding in which a regular member is absent or abstains.

The terms of the regular and alternate members of any board so appointed shall expire on December 31 of the year in which they are appointed. Members of any board shall have the qualifications prescribed by § 58.1-3374 and shall conduct their business as required by § 58.1-3378. (Code 1950, § 58-897; 1950, p. 851; 1979, c. 577; 1983, c. 304; 1984, c. 675; 1995, c. 24; 2011, c. 10.)

§ 58.1-3372.

Repealed by Acts 1985, c. 62

§ 58.1-3373. Permanent board of equalization.

A. Any county or city which uses the annual assessment method or the biennial assessment method authorized under § 58.1-3253 in lieu of periodic general assessments, may elect to create a permanent board of equalization in lieu of the board of equalization required under §§ 58.1-3370 and 58.1-3371. Such board shall consist of three or five members to be appointed by the circuit court of such county or city, or the circuit court having jurisdiction within such city, as follows: In the case of a three-member board, one member shall be appointed for a term of one year, one member shall be appointed for a term of two years, and one member shall be appointed for a term of three years. In the case of a five-member board, one member shall be appointed for a one-year term, one member shall be appointed for a two-year term, and three members shall be appointed for a three-year term. However, for any county operating under the county executive form of government, the number of

members of the permanent board of equalization shall be no less than three nor more than the number of districts for the election of members of the board of supervisors in the county, and the members of the permanent board of equalization shall be appointed by the circuit court of such county for three-year terms. As the terms of the initial appointees expire, their successors shall be appointed for terms of three years. Members of such boards shall have the qualifications prescribed by § 58.1-3374, and shall conduct their business as required by § 58.1-3378. The compensation of the members of any such boards shall be fixed by the governing body.

B. In addition to regular members appointed under subsection A, at the request of the local governing body, the circuit court for any locality may appoint one alternate member in the case of a three-member board and two alternate members in the case of a five-member board. The qualifications and compensation of alternate members shall be the same as those of regular members. In the case of a three-member board, the alternate shall be appointed for a two-year term. In the case of a five-member board, one alternate shall be appointed for a term of one year and one alternate shall be appointed for a term of two years. Thereafter, the terms for alternate members of five-member boards shall be for three-year terms.

A regular member when he knows he will be absent from or will have to abstain from any proceeding at a meeting shall notify the chairman of the board of equalization at least 24 hours prior to the meeting of such fact. The chairman may select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any proceeding in which a regular member is absent or abstains. (Code 1950, § 58-898.1; 1979, c. 577; 1984, c. 675; 1989, c. 390; 1995, c. 24; 2011, c. 10.)

§ 58.1-3374. Qualifications of members; vacancies.

Except as provided in § 58.1-3371 or 58.1-3373, every board of equalization shall be composed of not less than three nor more than five members. In addition to such regular members, at the request of the local governing body, the circuit court for any locality shall appoint one alternate member in the case of a three-member board and two alternate members in the case of a five-member board. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any proceeding at a meeting shall notify the chairman of the board of equalization at least 24 hours prior to the meeting of such fact. The chairman may select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any proceeding in which a regular member is absent or abstains.

All members of every board of equalization, including alternate members, shall be residents, a majority of whom shall be freeholders, in the county or city for which they are to serve and shall be selected from the citizens of the county or city. Appointments to the board of equalization shall be broadly representative of the community. Thirty percent of the members of the board shall be commercial or residential real estate appraisers, other real estate professionals, builders, developers, or legal or financial professionals, and at least one such member shall sit in all cases involving commercial, industrial or multi-family residential

property, unless waived by the taxpayer. No member of the board of assessors shall be eligible for appointment to the board of equalization for the same reassessment. In order to be eligible for appointment, each prospective member of such board shall attend and participate in the basic course of instruction given by the Department of Taxation under § 58.1-206. In addition, at least once in every four years of service on a board of equalization, each member of a board of equalization shall take continuing education instruction provided by the Tax Commissioner pursuant to § 58.1-206. Any vacancy occurring on any board of equalization shall be filled for the unexpired term by the authority making the original appointment.

On any board or panel thereof considering appeals of commercial or multi-family residential property in a locality with a population exceeding 100,000, 30 percent of the members of such board or panel shall be commercial or multi-family residential real estate appraisers who are licensed and certified by the Virginia Real Estate Appraiser Board to serve as general real estate appraisers, other commercial or multi-family real estate professionals or licensed commercial or multi-family real estate brokers, builders, developers, active members of the Virginia State Bar, or other legal or financial professionals who have knowledge of the valuation of property, real estate transactions, building costs, accounting, finance, or statistics. For the purposes of this section, commercial or multi-family residential property shall be defined as any property that is either operated as or zoned for use as commercial, industrial or multi-family residential rental property. (Code 1950, § 58-899; 1979, c. 577; 1983, c. 304; 1984, c. 675; 1995, c. 24; 2003, c. 1036; 2009, c. 25; 2010, c. 552; 2011, c. 10.)

§ 58.1-3375. Compensation of members.

The members of every board of equalization shall receive compensation, for time actually engaged in the duties of the board, to be fixed by the governing body of the county or city and paid out of the local treasury. The governing body of every county and of every city may limit the compensation to such number of days as in its opinion is sufficient for the completion of the work of the board. (Code 1950, § 58-900; 1984, c. 675.)

§ 58.1-3376. Organization and assistants; legal assistance.

A. Every board of equalization shall elect one of its members as chairman and another as secretary, and may employ necessary clerical and other assistants and call in advisors and fix their compensation, subject to the approval of the governing body of the county or city, to be paid out of the local treasury.

B. In any city with a population of more than 100,000, when the board of equalization, in fulfilling its functions, desires legal advice, the board shall request such advice from the attorney for the city or county for which they were appointed.

Notwithstanding any contrary provision of law, general or special, such attorney shall in a timely manner give his advice to the board.

If there is no such attorney or the attorney has a conflict, the board shall make a written request to the city or county governing body to employ an attorney to advise the board. The governing body shall respond in writing within ten days from receipt of such request.

If the governing body refuses to honor the board's request, then the board shall apply to the circuit court that appointed it. The judge of such circuit court may authorize the employment of an attorney to advise the board and order that the attorney be paid out of the local treasury. (Code 1950, § 58-901; 1984, c. 675; 1994, c. 509.)

§ 58.1-3377. Use of land books.

Every board of equalization for a county not having a general reassessment of real estate shall procure for its use from the clerk of the circuit court of the county the copy of the land book on file in his office for the current year if available, otherwise for the preceding year, and the board shall return the land book to the clerk upon the completion of its work. Every board of equalization for a city having need of a copy of the land book for any year shall procure an existing copy if available for the purpose; otherwise the governing body of the city shall cause a new copy to be made and furnished the board at the expense of the city. (Code 1950, § 58-902; 1984, c. 675.)

§ 58.1-3378. Sittings; notices thereof.

Each board of equalization shall sit at and for such time or times as may be necessary to discharge the duties imposed and to exercise the powers conferred by this chapter. Of each sitting public notice shall be given at least 10 days beforehand by publication in a newspaper having general circulation in the county or city and, in a county, also by posting the notice at the courthouse and at each public library, voting precinct or both. Such posting shall be done by the sheriff or his deputy. Such notice shall inform the public that the board shall sit at the place or places and on the days named therein for the purpose of equalizing real estate assessments in such county or city and for the purpose of hearing complaints of inequalities wherein the property owners allege a lack of uniformity in assessment, or errors in acreage in such real estate assessments. The board also shall hear complaints that real property is assessed at more than fair market value. Except as otherwise provided by the Code of Virginia:

1. The fair market value of real property shall be established by the board as of January 1 of the applicable year; or

2. If a county or city has adopted July 1 as its tax day for real property pursuant to § 58.1-3011, then, for other than public service corporation property, the fair market value of real property shall be established by the board as of July 1 of the applicable year.

The governing body of any county or city may provide by ordinance the date by which applications must be made by property owners or lessees for relief. Such date shall not be earlier than 30 days after the termination of the date set by the assessing officer to hear objections to the assessments as provided in § 58.1-3330. If no applications for relief are received by such date, the board of equalization shall be deemed to have discharged its

duties. Such governing body may also provide by ordinance the deadline by which all applications must be finally disposed of by the board of equalization. All such deadlines shall be clearly stated on the notice of assessment. (Code 1950, § 58-903; 1976, c. 679; 1983, c. 304; 1984, c. 675; 1989, c. 300; 2000, c. 383; 2003, c. 1036.)

§ 58.1-3379. Hearing complaints and equalizing assessments.

A. The board shall hear and give consideration to such complaints and shall adjust and equalize such assessments and shall, moreover, be charged with the especial duty of increasing as well as decreasing assessments, whether specific complaint be laid or not, if in its judgment, the same be necessary to equalize and accomplish the end that the burden of taxation shall rest equally upon all citizens of such county or city.

B. In all cases brought before the board, there shall be a presumption that the valuation determined by the assessor is correct. The burden of proof on appeal to the board shall be on the taxpayer to rebut the presumption and show by a preponderance of the evidence that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application and that it was not arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law relating to valuation of property. Mistakes of fact, including computation, that affect the assessment shall be deemed not to be in accordance with generally accepted appraisal practice.

However, in any appeal of the assessment of residential property filed by a taxpayer as an owner of real property containing less than four residential units, the assessing officer shall give the required written notice to the taxpayer, or his duly authorized representative, under subsection E of § 58.1-3331, and, upon written request, shall provide the taxpayer or his duly authorized representative copies of the assessment records set out in subsections A, B, and C of § 58.1-3331 pertaining to the assessing officer's determination of fair market value of the property under appeal. The assessing officer shall provide such records within 15 days of a written request by the taxpayer or his duly authorized representative. If the assessing officer fails to do so, the assessing officer shall present the following into evidence prior to the presentation of evidence by the taxpayer at the hearing: (i) copies of the assessment records maintained by the assessing officer under § 58.1-3331, (ii) testimony that explains the methodologies employed by the assessing officer to determine the assessed value of the property, and (iii) testimony that states that the assessed value was arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law regarding the valuation of property. Upon the conclusion of the presentation of the evidence of the assessing officer, the taxpayer shall have the burden of proof by a preponderance of the evidence to rebut such evidence presented by the assessing officer as otherwise provided in this section.

C. In any case before the board concerning a taxpayer's complaint in which the commissioner of the revenue or other local assessing officer requests the board to increase

the assessment after the taxpayer files an appeal to the board on a commercial, multifamily residential, or industrial property, the commissioner or other officer shall provide the taxpayer notice of the request not less than 14 days prior to the hearing of the board. Except as provided herein, if the taxpayer contests the requested increase, the assessor shall either withdraw the request or shall provide the board an appraisal performed by an independent contractor who is licensed and certified by the Virginia Real Estate Appraiser Board to serve as a general real estate appraiser, which appraisal affirms that such increase in value represents the property's fair market value as of the date of the assessment in dispute. The provisions of this subsection that require that the assessor provide the board with an appraisal shall not apply if (i) the requested increase is based on mistakes of fact, including computation errors, or (ii) the information on which the commissioner or other officer bases the requested increase was available to, but not provided by, the taxpayer in response to a request for information made by the commissioner or other officer at the time the challenged assessment was made.

D. The commissioner of the revenue or other local assessing officer of such county or city shall, when requested, attend the meetings of the board, without additional compensation, and shall call the attention of the board to such inequalities in real estate assessments in his county or city as may be known to him.

E. Every board of equalization may go upon and inspect any real estate subject to adjustment or equalization by it. (Code 1950, § 58-904; 1984, c. 675; 2003, c. 1036; 2010, c. 552; 2011, cc. 184, 232.)

§ 58.1-3380. Taxpayer or local authorities may apply for equalization.

Any taxpayer may apply to the board of equalization for the adjustment to fair market value and equalization of his assessment, including errors in acreage, and any county or city through its appointed representative or attorney may apply to the board of equalization to adjust an assessment of real property to its fair market value and to equalize the assessment of any taxpayer. (Code 1950, § 58-905; 1984, c. 675; 2003, c. 1036.)

§ 58.1-3381. Action of board; notice required before increase made.

A. The board shall hear and determine any and all such petitions and, by order, may increase, decrease or affirm the assessment of which complaint is made; and, by order, it may increase or decrease any assessment, upon its own motion. No assessment shall be increased until after the owner of the property has been notified and given an opportunity to show cause against such increase, unless such owner has already been heard.

B. Any determination of the assessment by the board shall be deemed presumptively correct for the succeeding two years unless the assessor can demonstrate by clear and convincing evidence that a substantial change in value of the property has occurred. This subsection shall apply to the City of Virginia Beach. (Code 1950, § 58-906; 1984, c. 675; 1993, c. 136; 2007, c. 813.)

§ 58.1-3382. Appeal.

The attorney for the county, city or town or any taxpayer, aggrieved by any such order, may apply to the circuit court of the county or city, for the correction and revision of such order, in the same manner and within the same time as is provided by law for the correction of erroneous assessments of real estate by any person who is aggrieved thereby. (Code 1950, § 58-907; 1984, c. 675.)

§ 58.1-3383. Omitted real estate and duplicate assessments.

The board may direct the commissioner of the revenue to enter upon the land books real estate which is found to have been omitted, and to cancel duplicate assessments of real estate. (Code 1950, § 58-908; 1984, c. 675.)

§ 58.1-3384. Minutes and copies of orders.

The board shall keep minutes of its meetings and enter therein all orders made and transmit promptly copies of such orders as relate to the increase or decrease of assessments to the taxpayer and commissioner of the revenue. The orders shall be recorded on forms prepared by the Tax Commissioner and provided to localities by the Department of Taxation or on forms prepared by the board that contain, at a minimum, all the information required on the forms prepared by the Tax Commissioner. (Code 1950, § 58-909; 1984, c. 675; 2003, c. 1036.)

§ 58.1-3385. Commissioner to make changes ordered; when order exonerates taxpayer.

The commissioner of the revenue shall make on his land book the changes so ordered by the board and, if such changes affect the land book for the then current year and such land book has been then completed, the commissioner of the revenue may for that year make a supplemental assessment in case of an increase in valuation. In case of a decrease in valuation, the order of the board shall entitle the taxpayer to an exoneration from so much of the assessment as exceeds the proper amount, if the taxes have not been paid by him and, in case the taxes have been paid, to a refund of so much thereof as is erroneous. (Code 1950, § 58-910; 1984, c. 675.)

§ 58.1-3386. Power of boards to send for persons and papers.

Such board shall have authority to summon taxpayers or their agents, or any person: (1) to furnish information relating to the real estate of any and all taxpayers, (2) to answer, under oath, all questions touching the ownership and value of real estate of any and all taxpayers, and (3) to bring before it their books of account or other papers and records containing information with respect to the valuation of real estate of the taxpayer or any other real estate subject to taxation within the county or city under review by the board. Such summons may be served in person or by registered mail. (Code 1950, § 58-911; 1984, c. 675.)

§ 58.1-3387. Penalty for failure to obey summons.

Any person refusing to answer the summons of the board of equalization, to furnish information or to produce his books of account, papers and other records, as required by this chapter, shall be deemed guilty of a Class 4 misdemeanor, and each day's failure to answer such summons, to furnish such information or to produce such books of account, papers and other records shall constitute a separate offense. (Code 1950, § 58-912; 1984, c. 675.)

§ 58.1-3388. In counties not having general reassessment, or annual or biennial assessment, taxes to be extended on basis of last equalization made.

In every county not having a general reassessment or an annual or biennial assessment of real estate, taxes for each year on real estate shall be extended on the basis of the last equalization made prior to such year, subject to such changes as may have been lawfully made. (Code 1950, § 58-913; 1979, c. 577; 1984, c. 675.)

§ 58.1-3389. Article not applicable to real estate assessable by Corporation Commission or Department.

This article shall not apply to any real estate which is assessable under the law by the State Corporation Commission or the Department of Taxation. (Code 1950, § 58-915; 1983, cc. 304, 570; 1984, c. 675.)

Chapter 9

State and Local Government Conflict of Interests Act

§ 2.2-3100. Policy; application; construction.

The General Assembly, recognizing that our system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers and employees, finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests. To that end and for the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests, the General Assembly enacts this State and Local Government Conflict of Interests Act so that the standards of conduct for such officers and employees may be uniform throughout the Commonwealth.

This chapter shall supersede all general and special acts and charter provisions which purport to deal with matters covered by this chapter except that the provisions of §§ 15.2-852, 15.2-2287, 15.2-2287.1, and 15.2-2289 and ordinances adopted pursuant thereto shall remain in force and effect. The provisions of this chapter shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title and ordinances adopted pursuant to § 2.2-3104.2 regulating receipt of gifts.

This chapter shall be liberally construed to accomplish its purpose. (1987, Sp. Sess., c. 1, § 2.1-639.1; 1990, c. 672; 2001, c. 844; 2003, c. 694; 2008, c. 532.)

§ 2.2-3115. Disclosure by local government officers and employees.

A. The members of every governing body and school board of each county and city and of towns with populations in excess of 3,500 shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement annually on or before January 15.

The members of the governing body of any authority established in any county or city, or part or combination thereof, and having the power to issue bonds or expend funds in excess of $10,000 in any fiscal year, shall file, as a condition to assuming office, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such a statement annually on or before January

15, unless the governing body of the jurisdiction that appoints the members requires that the members file the form set forth in § 2.2-3117.

Persons occupying such positions of trust appointed by governing bodies and persons occupying such positions of employment with governing bodies as may be designated to file by ordinance of the governing body shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement annually on or before January 15.

Persons occupying such positions of trust appointed by school boards and persons occupying such positions of employment with school boards as may be designated to file by an adopted policy of the school board shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement annually on or before January 15.

B. Nonsalaried citizen members of local boards, commissions and councils as may be designated by the governing body shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such form annually on or before January 15.

C. No person shall be mandated to file any disclosure not otherwise required by this article.

D. The disclosure forms required by subsections A and B shall be provided by the Secretary of the Commonwealth to the clerks of the governing bodies and school boards not later than November 30 of each year, and the clerks of the governing body and school board shall distribute the forms to designated individuals no later than December 10 of each year. Forms shall be filed and maintained as public records for five years in the office of the clerk of the respective governing body or school board. Forms filed by members of governing bodies of authorities shall be filed and maintained as public records for five years in the office of the clerk of the governing body of the county or city.

E. Candidates for membership in the governing body or school board of any county, city or town with a population of more than 3,500 persons shall file a disclosure statement of their personal interests as required by § 24.2-502.

F. Any officer or employee of local government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subdivision A 1 of § 2.2-3112 or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental or advisory agency.

G. In addition to any disclosure required by subsections A and B, in each county and city and in towns with populations in excess of 3,500, members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city and town managers or executive officers shall make annual disclosures of all their interests in real estate located in the county, city or town in which they are elected, appointed, or employed. Such disclosure shall include any business in which such persons own an interest, or from which income is received, if the primary purpose of the business is to own, develop or derive compensation through the sale, exchange or development of real estate in the county, city or town. Such disclosure shall be filed as a condition to assuming office or employment, and thereafter shall be filed annually with the clerk of the governing body of such county, city or town on or before January 15. Such disclosures shall be filed and maintained as public records for five years. Forms for the filing of such reports shall be prepared and distributed by the Secretary of the Commonwealth to the clerk of each governing body.

H. An officer or employee of local government who is required to declare his interest pursuant to subdivision A 2 of § 2.2-3112 shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes of his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day. The officer or employee shall also orally disclose the existence of the interest during each meeting of the governmental or advisory agency at which the transaction is discussed and such disclosure shall be recorded in the minutes of the meeting.

I. An officer or employee of local government who is required to declare his interest pursuant to subdivision A 3 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

(1987, Sp. Sess., c. 1, § 2.1-639.14; 1988, c. 849; 1995, c. 495; 1996, c. 526; 2000, c. 317; 2001, cc. 217, 844; 2003, c. 694; 2012, c. 429.)

Chapter 10

Virginia Freedom of Information Act

§ 2.2-3700. Short title; policy.

A. This chapter may be cited as "The Virginia Freedom of Information Act."

B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.

Any ordinance adopted by a local governing body that conflicts with the provisions of this chapter shall be void. (1968, c. 479, § 2.1-340; 1976, c. 467, § 2.1-340.1; 1989, c. 358; 1990, c. 538; 1999, cc. 703, 726; 2001, c. 844; 2002, c. 393.)

§ 2.2-3701. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means any audio or combined audio and visual communication method.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, whose members are appointed by the participating local governing bodies, and such unit includes two or more counties or cities.

"Scholastic records" means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution. (1968, c. 479, § 2.1-341; 1970, c. 456; 1974, c. 332; 1975, c. 307; 1977, c. 677; 1978, cc. 573, 826; 1979, cc. 369, 687; 1980, c. 754; 1984, c. 252; 1989, c. 358; 1990, c. 538; 1993, cc. 270, 720; 1994, cc. 845, 931; 1996, c. 609; 1997, c. 641; 1999, cc. 703, 726; 2001, c. 844; 2002, c. 393; 2003, c. 897; 2007, c. 945; 2008, cc. 233, 789; 2010, c. 706; 2011, c. 242.)

§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.

A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-3711.

B. No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.

C. Every public body shall give notice of the date, time, and location of its meetings by placing the notice in a prominent public location at which notices are regularly posted and in the office of the clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief administrator. All state public bodies subject to the provisions of this chapter shall also post notice of their meetings on their websites and on the electronic calendar maintained by the Virginia Information Technologies Agency commonly known as the Commonwealth Calendar. Publication of meeting notices by electronic means by other public bodies shall be encouraged. The notice shall be posted at least three working days prior to the meeting. Notices for meetings of state public bodies on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

D. Notice, reasonable under the circumstance, of special or emergency meetings shall be given contemporaneously with the notice provided members of the public body conducting the meeting.

E. Any person may annually file a written request for notification with a public body. The request shall include the requester's name, address, zip code, daytime telephone number, electronic mail address, if available, and organization, if any. The public body receiving such request shall provide notice of all meetings directly to each such person. Without objection by the person, the public body may provide electronic notice of all meetings in response to such requests.

F. At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.

G. Nothing in this chapter shall be construed to prohibit the gathering or attendance of two or more members of a public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting. The notice provisions of this chapter shall not apply to informal meetings or gatherings of the members of the General Assembly.

H. Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open. No public body shall conduct a meeting required to be open in any building or facility where such recording devices are prohibited.

I. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative interim study commissions and committees, including the Virginia Code Commission; (iii) study committees or commissions appointed by the Governor; or (iv) study commissions or study committees, or any other committees or subcommittees appointed by the governing bodies or school boards of counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board.

Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records shall be deemed public records and subject to the provisions of this chapter.

Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii) the members of the public body recorded as present and absent; and (iii) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall include (a) the identity of the members of the public body at each remote location identified in the notice who participated in the meeting through electronic communications means, (b) the identity of the members of the public body who were physically assembled at the primary or central meeting location, and (c) the identity of the members of the public body who were not present at the locations identified in clauses (a) and (b), but who monitored such meeting through electronic communications means. (1968, c. 479, § 2.1-343; 1973, c. 461; 1976, c. 467; 1977, c. 677; 1982, c. 333; 1989, c. 358; 1990, c. 538; 1993, c. 720; 1995, c. 562; 1999, cc. 696, 703, 726; 2000, c. 227; 2001, c. 844; 2004, cc. 730, 768; 2005, c. 352; 2007, c. 300; 2009, c. 628; 2010, c. 309.)

§ 2.2-3710. Transaction of public business other than by votes at meetings prohibited.

A. Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter. No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means.

B. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit (i) separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business, whether such contact is done in person, by telephone or by electronic communication, provided the contact is done on a basis that does not constitute a meeting as defined in this chapter or (ii) the House of Delegates or the Senate of Virginia from adopting rules relating to the casting of votes by members of standing committees. Nothing in this subsection shall operate to exclude any public record from the provisions of this chapter. (1987, c. 71, § 2.1-343.2; 1999, cc. 703, 726; 2000, c. 932; 2001, cc. 710, 844; 2002, c. 491.)

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1.

12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental health records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.5.

16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the

Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions to the extent such discussions

identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined in § 56-557, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1.

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision F 1 of § 2.2-3706.

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6.

41. Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 13 of § 2.2-3705.3.

42. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

44. Discussion or consideration by the Virginia Tobacco Indemnification and Community Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

(1968, c. 479, § 2.1-344; 1970, c. 456; 1973, c. 461; 1974, c. 332; 1976, cc. 467, 709; 1979, cc. 369, 684; 1980, cc. 221, 475, 476, 754; 1981, cc. 35, 471; 1982, cc. 497, 516; 1984, cc. 473, 513; 1985, c. 277; 1988, c. 891; 1989, cc. 56, 358, 478; 1990, cc. 435, 538; 1991, c. 708; 1992, c. 444; 1993, cc. 270, 499; 1995, c. 499; 1996, cc. 855, 862, 902, 905, 1046; 1997, cc. 439, 641, 785, 861; 1999, cc. 485, 518, 703, 726, 849, 867, 868; 2000, cc. 382, 400, 720, 1064; 2001, cc. 231, 844; 2002, cc. 87, 393, 455, 478, 499, 655, 715, 830; 2003, cc. 274, 291, 332, 618, 703; 2004, cc. 398, 690, 770; 2005, cc. 258, 411, 568; 2006, cc. 430, 499, 518, 560; 2007, cc. 133, 374, 566, 739; 2008, cc. 626, 633, 668, 721, 743; 2009, cc. 223, 325, 472, 765, 810, 827, 845; 2010, cc. 310, 630, 808; 2011, cc. 89, 111, 147, 536, 541, 816, 874; 2012, cc. 476, 507, 803, 835.)

§ 2.2-3713. Proceedings for enforcement of chapter.

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person

notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;

2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and

3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exemption by a preponderance of the evidence. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

F. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this chapter. (1968, c. 479, § 2.1-346; 1976, c. 709; 1978, c. 826; 1989, c. 358;

1990, c. 217; 1996, c. 578; 1999, cc. 703, 726; 2001, c. 844; 2007, c. 560; 2009, c. 634; 2010, c. 299; 2011, cc. 133, 783.)

§ 2.2-3714. Violations and penalties.

In a proceeding commenced against any officer, employee, or member of a public body under § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.8, 2.2-3706, 2.2-3707, 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than $500 nor more than $2,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than $2,000 nor more than $5,000. (1976, c. 467, § 2.1-346.1; 1978, c. 826; 1984, c. 252; 1989, c. 358; 1996, c. 578; 1999, cc. 703, 726; 2001, c. 844; 2003, c. 319; 2004, c. 690; 2008, cc. 233, 789; 2011, c. 327.)

Appendix: A

SAMPLE ADVERTISEMENT FOR NEWSPAPER

PUBLIC NOTICE

BOARD OF EQUALIZATION

for

County/City of _____

Public notice is hereby given that the Board of Equalization for (County/City) will meet on the days hereafter listed for the purpose of hearing complaints of inequalities including errors in acreage. Upon hearing such complaints, either oral or written, the Board will give consideration **AND INCREASE, DECREASE OR AFFIRM** such real estate assessments. Before a change can be granted, the taxpayer or his agent must overcome a clear presumption in favor of the assessment. The taxpayer or agent must provide substantial evidence that the assessment of the property is not uniform with the assessments of other similar properties or that the property is assessed in excess of its fair market value.

Appointments will be scheduled every 15 minutes to minimize waiting. To appear before the Board of Equalization, please call (Phone Number), from 0:00 A.M. and 0:00 P.M. Meetings of the Board to hear objections will be held at (location). The date(s) and time(s) are:

March 20, 20__ 9:00 AM to 4:00 PM

March 23, 20__ 1:00 PM to 5:00 PM

March 27, 20__ 6:30 PM to 10:00 PM

(Additional dates and times will be scheduled if necessary and advertised)

By order of the County/City Board of Equalization

Appendix: B

LETTER OF NO CHANGE TO ASSESSMENT

(Date) City/County Map No._____

(Taxpayer/Agent Name)
(Address)
(City, County)

RE: Action of Board of Equalization

As requested during a recent public hearing, the assessment on the property under review by the board has been carefully considered.

It is the opinion of this board that no justification for changing the value has been established since your property does not appear to be appraised in excess of fair market value, nor does it appear to be out of line with similar properties. The value remains as shown on the notice of assessment mailed to you prior to this hearing.

Please be assured that the Board of Equalization has given your request for adjustment serious consideration, and we appreciate your interest and cooperation.

Sincerely,

Board of Equalization

Appendix: C

LETTER OF PROPOSED INCREASE IN ASSESSMENT

(DATE) CITY/COUNTY MAP NO._____

(OWNER'S NAME)
(ADDRESS)
(CITY/COUNTY)

RE: PROPOSED INCREASE IN ASSESSMENT

Dear:

The Board of Equalization of (City/County), has reviewed your property, assessed at $_____ and described as (Land Book Description). The board, after reviewing other property, finds it necessary to increase your assessment to $_____. You have an opportunity to show cause against such increase. You must contact this office no later than (Date, Time). If you fail to contact this board by such date and time, the board will order such proposed increase.

Any appeal from the Order, must be to the Circuit Court of this city/county within the time provided for by law.

You may correspond with us in writing, by telephone or appear in person, however, no later than (date and time), if you choose to exercise your right of appeal.

You may contact the Clerk to the Board of Equalization at (Phone No.) from (Time).

Board of Equalization

Appendix: D

THIS APPLICATION MAY ONLY BE REQUIRED BY ORDINANCE

APPLICATION TO THE BOARD OF EQUALIZATION

County/City of_____
Address
Phone No. (555) 555-5555

DATE APPLICATION RECEIVED:_____.

(Use one form for each parcel appealing):

OWNERS NAME_____ (As Listed On Land Book)

OWNERS ADDRESS_____

Address of Property if Different from above:

_____

Tax Map Number: _____

Reason for Appeal (Check): ( ) Land Value; ( ) Building Value; ( ) Total Value;

REQUIRED:

_____ Date:_____ Signature of Owner, Taxpayer or Officer of Company

Telephone (home) _____ (work) _____

Notary: _____My Commission Expires_____

(An Agent or Representative appearing on behalf of the property owner: A signed letter of authorization by property owner must be submitted along with application for review).

Optional Information:

Other reasons: _____

_____

List comparable or similar properties for Board to review: (by Tax Map Number)

1) _____

2) _____

Date of Hearing:_____; Time of Hearing:_____.

Appendix: E
Form 907

COMMONWEALTH OF VIRGINIA

Board of Equalization of Real Estate Assessments

YEAR _____

Name of Owner

Street Address

City State Zip Code

Map Number _____

Order Number _____

ORDER EQUALIZING REAL ESTATE ASSESSMENT OF THE

City/County _____

Incorporated Town _____

District/Ward/Borough _____

Description _____

Lot, block and section, if applicable

	Number of acres in each tract	VALUE OF LAND		Value of buildings and improvements	Value of standing timber trees owned by OTHERS than the owners of the land or lot	TOTAL VALUE	
		Fair market value of land or lot and standing timber trees owned by the same person; or value of land or lot exclusive of standing timber trees not owned by the owner of the land or lot.	Use value of eligible land including the value of standing timber trees owned by the owner of the land and the fair market value of the other land including the land area required by the farmhouse or any other structure not related to special use			Total fair market value of land or lot and standing timber trees owned by the owners of the land or lot, buildings and improvements; also standing timber trees owned by others and the owners of the land or lot.	Total use value of eligible land including the value of standing timber trees owned by the owner of the land or lot and the fair market value of other land and buildings and improvements; also standing timber trees owned by others than the owner of the land or lot
Assessment on Land Book							
Equalized Assessment							

THIS ORDER, equalizing the real estate assessment aforesaid, in the manner aforesaid, is this day made by this board of equalization in conformity with law, after giving all notice required by law; and it is directed that this order be entered in the minutes of this board, and that one copy of this order be promptly transmitted to the taxpayer aforesaid and one copy to the commissioner of the revenue of this county.

Given under our hands this _____ day of _____, 20_____

_____

Chairman.

Teste: _____
Secretary

NOTES

This order must be prepared in triplicate and copies disposed of as above indicated.
A separate order is required for each assessment charged.

4901031, Rev. 5/03

Appendix: F

Map No. _____

Order No. _____

Real Property Appeal Questionnaire

(To be completed by the board of equalization upon the final determination of each appeal)

Name of Owner: _____

Property Address: _____

Property Description: _____

Classification of property :

Residential: _____

Commercial: _____

Multifamily: _____

Industrial: _____

Agricultural: _____

Assessed value on appeal $_____

Value determined by
Board of Equalization $_____

Reason for appeal (check each reason that is applicable):

Assessment not uniform in relation to comparable property: _____

Assessment exceeds fair market value: _____

Assessment based on incorrect data: _____

Assessment not determined in
accordance with generally accepted appraisal practice: _____

Other reasons (please explain): _____

_____

Reason for change, if any (check all applicable reasons):

Assessment not uniform in relation to comparable property: _____

Assessment exceeded fair market value: _____

Assessment based on incorrect data: _____

Assessment not determined in
accordance with generally accepted appraisal practice: _____

Other reasons (please explain):_____

_____

Appendix: G

Annual Report

Board of Equalization

City/County of _____

Assessment Year: _____

Names and Occupation (if retired, give former occupation) of Members of Board of Equalization or Review:

How Often Does Your Locality Conduct Reassessments?

Total Number of Appeals Received: _____

Locality subtotals by property classification:

Residential: _____

Commercial: _____

Multifamily: _____

Industrial: _____

Agricultural: _____

Number of Appeals where Values were changed: _____ Reduced

_____ Increased

_____ Total

Locality subtotals by property classification:

	Reduced	Increased	Total
Residential:	_____	_____	_____
Commercial:	_____	_____	_____
Multifamily:	_____	_____	_____
Industrial:	_____	_____	_____
Agricultural:	_____	_____	_____

Please indicate locality subtotals for each category of "reasons for appeal" below. In instances with more than one reason, please include only the main or controlling reason.

Reasons for Appeal:

Assessment not uniform in relation to comparable property: _____

Assessment exceeded fair market value: _____

Assessment based on incorrect data: _____

Assessment not determined in accordance with generally accepted appraisal practice: _____

Other reasons: _____

Please indicate locality subtotals for each category of "reasons for change" below. In instances with more than one reason, please include only the main or controlling reason.

Reasons for Change:

Assessment not uniform in relation to comparable property: _____

Assessment exceeded fair market value: _____

Assessment based on incorrect data: _____

Assessment not determined in accordance with generally accepted appraisal practice: _____

Other reasons: _____

Appendix H.

Notice of Rights:

LETTERHEAD

DATE

NAME
ADDRESS
CITY AND STATE

RE: Appeal of Assessment

Dear (Taxpayer):

The (Locality) (County/City) Board of Equalization has received your request to appeal the assessment of your property (property identifier).

We have scheduled your appeal to be heard on (date and time) in (address) (city), Virginia

You have the right under §58.1-3331, to review and obtain copies of all the assessment records pertaining to the assessing officer's determination of fair market value of such real property and to request that the Assessor make a physical examination of the subject property. These records are available at the (Office) located at (address) in (city), Virginia, Monday through Friday, between the hours of 8am and 5pm. To schedule a physical examination with the Assessor please call (contact) at (phone/e-mail), Monday through Friday, between the hours of 8am and 5pm.

If you are unable to meet with the Board at the prescribed place and time, please call (contact) at (phone) to reschedule your appearance.

Sincerely,

Assessor

Appendix I.
Records Retention

COMMONWEALTH OF VIRGINIA
RECORDS MANAGEMENT AND IMAGING SERVICES DIVISION (Form RM-2 Aug 98)
RECORDS RETENTION AND DISPOSITION SCHEDULE
GENERAL SCHEDULE NO 5: **ASSESSMENT RECORDS**
SCHEDULED AGENCIES: COUNTY AND MUNICIPAL GOVERNMENTS
SCHEDULED DIVISIONS: COMMISSIONERS OF THE REVENUE, REAL ESTATE ASSESSORS
EFFECTIVE SCHEDULE DATE **December 6, 2007**

Real Estate Assessment Records: Board of Equalization Files
This series documents the activities of the board as they deal with the various tax assessment issues presented for their action.
Series Number: 010271 Retain until next general assessment or 4 years, whichever is longer, then destroy in compliance with No. 8 on the schedule cover page (see below).

Real Estate Assessment Records: Board of Equalization Minutes
This series documents the decisions of the Board as it deals with tax assessment issues presented for official action.
Series Number: 007002 Retain 4 years, then transfer to the Archives, Library of Virginia for permanent retention.

Real Estate Assessment Records: Income and Expense Statements
This series is used to help determine tax rates for commercial buildings that are leased for use. This includes shopping centers, office buildings, warehouses, and apartment buildings. The series consists of income and expense statements that are submitted by the owners/realtors that detail their business expenses and income relating to the properties. This series is required by *Code of Virginia* §58.1-3294.
Series Number: 007001 Retain for 5 years after filing then destroy in compliance with No. 8 (see below) on schedule cover page. *Code of Virginia* §58.1-3 restricts public access to these records.

Real Estate Assessment Records: Land Use Files
This series documents the real property that is taxed for land use purposes by the locality. Land use property is primarily used for agricultural purposes and is taxed differently from residential and business real property.
Series Number: 010272 Retain 6 years then destroy.

(No 8. Custodians of records must ensure that information in confidential or privacy protected records is protected from unauthorized disclosure through the ultimate destruction of the information. Normally, destruction of confidential or privacy-protected records will be done by shredding or pulping. "Deletion" of confidential or privacy-protected information in computer files or other electronic storage media is not acceptable. Electronic records must be "wiped" clean or the storage media physically destroyed.)